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TRUST DISSOLUTION

BY

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BOSTON

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PREFACE

The control of concentrated wealth and industry, such as is represented by the organization and aggregation of capital in the dominating industrial combinations of the present day, is a vital and complicated problem which is engaging the attention of all progressive people. The aim of this book is not to justify nor to condemn any policy towards trust combinations, but to present a brief survey of the efforts made to enforce the trust policy of the federal government, and of the results obtained from its enforcement. After briefly surveying the trust movement and the antitrust legislation, the work presents a concrete, separate, and concise study of the chief monopolistic combinations which the Government has or is now trying to dissolve under the terms of the trust laws. A short history of each combination is given in order to point out the means by which the monopolistic control was created and maintained, the extent and nature of the control, the desirability of change or dissolution, and the elements which must be overcome if competitive conditions are to be restored. Such a description is not only essential to an understanding of the nature and effectiveness of the dissolution, but it shortens the space required to set forth the facts of dissolution. In some cases, after such a history is given, only a few paragraphs will be necessary to make clear what was accomplished by the dissolution. The study of the more important cases is followed by brief statements of other decisions under the trust laws. While the legal viewpoint has dominated in most of the dissolutions and many references to court records are given in this work, the study is approached from the economic viewpoint. In its preparation the writer has felt a need of such a book for general readers, as well as students of economics, who are interested in this vital and complex national problem.

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The time for closing this study seemed opportune as the Government had discontinued trust prosecution pending the duration of the war, and the writer entered the army service as soon as the manuscript had been delivered to the publisher and was retained in it into 1919, thereby preventing further access to adequate library facilities. Other effects of the war which may result from the cessation of trust prosecution, war-time co-operation and control, and changing views, cannot be foretold at this time.

The writer wishes to express his indebtedness to Dr. Eliot Jones whose criticism and profound respect for facts aided the writer during the first several years of this research, and to Drs. N. R. Whitney, N. A. Brisco, and F. E Haynes for helpful criticism and correction on the manuscript.

M. R. T.

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CHAPTER I

THE DEMAND FOR TRUST CONTROL

THE most prominent aspect of the modern trust problem is that of monopoly. The problem of monopoly, however, is not a new one. It has existed in almost all epochs of history, as the legislation against efforts to obtain monopolies testifies. The nature of these efforts and the extent to which monopolistic conditions have prevailed from time to time have been determined not only by restrictive legislation regulating property and business, but also by various economic conditions. Until recently, competition was much more limited locally than to-day. Under conditions of domestic production, limited and costly transportation, inadequate means of communication, and provincial customs and tastes, competition had many natural limitations, and efforts to secure monopolies consisted largely of local understandings among competitors. This situation largely prevailed in the United States through the early part of the nineteenth century.

The character of monopolistic efforts, as well as the size, scope and organization of modern business units, changed during the latter part of the nineteenth century to meet the wider competition which resulted from the development of the factory system of production, improved means of transportation and communication, and the development of more liberal laws and economic doctrines regarding international trade. The recent rise of large combinations and monopolies in the leading industrial nations has followed the development of extensive competition. The trust movement in the

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United States, beginning about 1880, was preceded by a remarkable era of railroad expansion and the extension of markets at home and abroad. The failure of local monopoly under these changed conditions gave rise to efforts of combination and control of the market on a larger scale.

Modern monopolies may be divided into legal and industrial. The former are based upon legal restrictions. Typical examples are copyrights and patent rights. The exclusive character and long duration of patent rights have made them important aids in obtaining monopoly control. We show later how several important industrial monopolies were built up and maintained largely by reliance upon them. Complete monopoly of a natural resource is seldom attained; yet a number of important monopolies have obtained almost complete control of natural resources or raw materials through the legal right of private ownership. The second class of monopolies, the industrial, are found in public utilities and in the so-called "trusts." In this study we are not concerned with the former, except in the case of a few railroad combinations which are taken up in order to show important interpretations of the anti-trust laws or the plan of dissolution employed. The attention is directed chiefly to the industrial trusts which are usually large combinations of competing concerns under a single management. The essence of industrial monopoly is the power to influence materially the price of a commodity through a control of the supply. It is dependent upon the erection of barriers against competition.

Large scale production should not be confused with monopoly. Large scale production, so characteristic of modern industry, has come to stay because of increased efficiency and other important advantages, but large scale production does not necessarily lead to monopoly. How far efficiency resulting from concentrated ownership and management leads in this direction cannot be definitely determined from the data at hand; for it varies in different industries. It is only recently that the special investigations by the Government into various industries have given much attention to the comparative efficiency between monopolistic and non-

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monopolistic production. The findings on this point in regard to several industries will be noted in connection with a description of several combinations. More facts based upon a careful and comprehensive investigation of the efficiency of trusts are needed for arriving at definite conclusions. So far, it appears that there are few, if any, industries of our country which require monopoly control to secure the greatest economies of production. The trusts have not in their own defence shown that greater efficiency is the motive for extreme concentration of control. Such proof would constitute a defence which could only be attacked from the standpoint of public policy.

There are no general economies of production applying to all industries; these economies are different for each kind of industry, and can be secured in most industries, if not in all, with less than monopoly control. Each industry must be studied to see how large a business can be warranted on the sole basis of economy in production. A large proportion of the attempts to establish monopolistic control have ended in failure. Even the most efficient and complete trusts have maintained their dominant control only by the use of unfair methods of competition. Our trusts have not been built up through superior efficiency. The eagerness to form combinations larger than the economies of production warrant, has not been primarily to effect economies or social gain. The dominant motives have been: to escape competition, sometimes ruinous because unfair and predatory; to secure the benefits of rising or raised prices; to acquire power; and to secure through stock-jobbing schemes or otherwise more immediate profits to the organizers and promotors. The dominance of these motives in forming monopolistic combinations is concretely shown in later chapters.

The history of the trust movement in the United States may be conveniently divided into five periods. During the first period, extending from 1880 to 1887, various pools and the Standard Oil trust were formed. There was a marked increase in the size and number of large scale industrial organizations. During the second period, continuing from 1887 to 1897, the Whiskey and Sugar trusts followed the

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example set by the Standard Oil. The progress of the monopoly movement was such as to cause most of the states, as well as Congress, to enact anti-trust laws between 1889 and 1893. The depression during the latter years of this period checked the movement. The third period extended from 1897 to 1902. It was characterized by the greatest trust movement of the world's history. The phenomenal prosperity which flooded the country greatly aided the movement. The consolidation craze was further stimulated by the zeal of trust promoters and by the failure in the Knight case, the first important case decided under the federal antitrust law, to declare the well known sugar trust to be illegal. The greatest activity occurred in the years 1898 to 1901, during which time no less than 46 great consolidations were formed.[1] All of these were apparently combinations of competing enterprises which embraced a considerable part of the total business in their respective branches of industry. The number of industrial combinations controlling two or more plants, increased from 82, with a combined capitalization of $1,196,724,310 on January 1, 1898, to 318, with a capitalization of $7,246,342,533 on January 1, 1904.[2]

The fourth period of the trust history extended from 1902 to 1911. This period was characterized by bitter experiences for those supporting the trust movement. On the one hand there were economic and financial reactions resulting in panics, bankruptcies, and investment losses. On the other hand there was a growing demand for publicity, more vigorous trust prosecution, and additional antitrust legislation. Special investigations of well known trust combinations were made by the Government, which revealed the existence of unfair competition and other evils in the Meat, Sugar, and Oil trusts. The more vigorous trust prosecution following the condemnation of the holding company as a device for attaining monopoly, in 1904, culminated in the Standard Oil and American Tobacco decisions in 1911. The restraining influences of trust prosecution and legislation

[1] Trust Laws and Unfair Competition, 1916, pp. 12, 13.
[2] Moody, The Truth About the Trusts, p. 486.

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upon the trust movement continued in the fifth period, beginning with 1911. Many important trust combinations were put to a legal test. One of the important features of this period was the legislation passed in 1914 supplementing the antitrust laws and establishing the Federal Trade Commission to help enforce such laws. The prosperity and other changes resulting from the European war are affecting some phases of the trust situation in the United States, but it is too early to arrive at conclusions as to the results that may follow.

While monopolistic combinations appeared in a considerable portion of modern industry, it should be remembered that at all times competition has prevailed over most of the industrial field.

The form of monopolistic organization changed from time to time. This was due in part to the change in size, scope, and organized form of modern business, and in part to the antitrust legislation and court decisions, which declared certain forms of monopolistic organizations to be illegal. New forms were found even more rapidly than the older ones were declared illegal. The earliest forms of monopolistic combinations were pools. These were direct agreements between the corporations concerned. Pools were numerous and of many kinds, depending upon the nature of the industry, business habits, and the laws of the various states.

Among the pooling arrangements may be mentioned the "gentlemen's agreement" which fixed the selling price of the output; percentage agreements, limiting the business of each company to a percentage of the total output; apportionment of a limited output among the separate companies; the use of a common selling bureau which should receive all bids and let all contracts; a division of the markets and territory among the member companies; a division of profits; and patent pools in which the patent or patents of an industry were made the basis of control. The pools, while sometimes of long duration, were in most industries of short duration and were frequently renewed on a different basis. Their chief weakness was in the lack of central control necessary to hold all parties to the agreements. Their illegality in

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most states, and later under federal laws, was a great source of weakness. The pool agreements could not be enforced at law. Despite this fact, pools are still the most common and popular means of limiting competition.

Next in order of time was the trust agreement, or the trustee device. Under this arrangement the stockholders of the corporations party to the trust agreement assigned all their stock and voting rights to a group of trustees in return for trust certificates, each representing a fractional ownership in all the corporations combined. The trustees had the sole management and voting power of the corporations, and collected all the dividends, which were paid out pro rata on the trust certificates. The trustee device of the Standard Oil is a typical example of the trust agreement. Its superiority over the pool was due to its centralized and secret control.

In the late '90's, the illegal and uncertain trustee arrangement gave place to the holding corporation. The holding company acquired a majority of the shares of the constituent companies. It possessed the advantages of the trustee arrangement, and in addition had a perpetual organization, as well as legal standing in a few of the states. The separate corporations retained their identity, but lost their independent action when a bare majority of their shares was purchased directly or substituted for shares of the holding company, and came wholly under the control of the directors of the latter company. This form of organization was used much during the period of the great trust movement. It was a legal form of corporation in some of the states, easy to establish, and convenient and effective in wielding control.

When the holding company as a means of attaining monopoly was declared illegal in 1904, trust combinations tended to assume an informal system of co-operation or took the form of the consolidated corporation. The co-operative systems aimed to unite the competitors in some harmonious policy regarding the volume of output, and prices, through tacit understandings and communications. These arrangements were generally known as a "gentlemen's agreement."

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Even before the holding company, as a refuge for the trusts, was declared illegal, consolidation into a single huge corporation had become an approved form of organization for the consolidation of large interests. In the consolidated corporation the separate companies to be brought together were purchased directly and lost their identity. The legality of monopoly control secured through consolidation has not been determined. If it is declared legal, no matter how inclusive its control, there may be a renewed movement toward the concentration of industry.

A further form of monopoly control, known as the "community of interests," developed in connection with plans of dissolution employed by the courts. Under this form of control a small group of stockholders obtain a majority stock control in each of the separate corporations, and rely upon their common interest in each of the companies to bring about unity of action and control.

The appearance of the large modern trust was soon followed by a demand for its repression. The first trusts to appear were very large, and dominated important industries. They were at once conspicuous, and soon became notorious because of political activities and other evil practices. As long as monopoly was in the hands of an individual or was confined to a locality, it did not greatly concern the community as a whole, but a monopoly control of vast aggregates of capital such as we have in the large corporations aroused the public. Here we have the dangerous weapon of monopoly in the hands of so powerful a giant that it may well become the cause of great concern to the whole community. Large corporations having monopolistic control is the crux of the trust problem, and legislation against trusts has been directed against the monopolistic feature of such organizations.

The present legal position of large industrial combinations in the United States can best be presented by reviewing the growth and enforcement of governmental policies over such organizations during the past quarter of a century. During this period these policies have been determined by three agencies: by Congress in the enactment of

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laws; by the President in the administration of the laws and in the advice he gives to Congress; and by the Supreme Court in the interpretation of the laws as to the acts and existence of combinations. Behind and overshadowing these agencies is the indefinite but powerful force of public opinion, which, however, can find expression only through one of these agencies.

For over five hundred years industrial monopolies have been illegal under the common law, which forms the basis of our legal system. The people of the United States, in accordance with their traditional individualism, have firmly stood for the repression of monopoly, even in governmental affairs. With the increase of industrial combinations during the eighties and nineties, the common law was supplemented and strengthened by numerous statute laws passed by the states and Congress. By 1893 all the states of the Union except six had antitrust laws. About 95 percent of the trusts were organized under the laws of these six states which, by their lack of co-operation, rendered ineffective the laws of the other states.

The passage of the Interstate Commerce Act in 1887 paved the way for federal legislation against trusts. This act required that rates in interstate commerce should be reasonable, and prohibited discrimination and railway pools. It also provided for an Interstate Commerce Commission which should supervise the enforcement of the law and decide complaints regarding rates and discrimination. Just as the breakdown of state control over railroads brought about federal legislation, so the breakdown of state control over trusts led to the passage of federal antitrust legislation. The antitrust sentiment found its first expression in the national party platforms in 1888, when both of the leading parties were pledged to bring about federal legislation. Two years later Congress passed the Sherman antitrust act.[3] At that time the trust movement was still in its infancy. Of the important trusts then in existence the Sugar trust was dissolved by the New York courts in 1890; the Oil trust, by the Ohio courts in 1892; and the Whisky trust,

[3] 26 Stat., 209.

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by the Illinois courts in 1896; while the Tobacco trust merely dominated one branch of the tobacco business, the cigarette trade. There were only about six other trusts, all of which were financially unimportant, hence the conditions seemed highly favorable for successful federal interference and control.

The Sherman law was very comprehensive. Section 1 declares that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the courts." [4]

Section 2 adds: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states or with foreign nations shall be deemed guilty of a misdemeanor." Violations of this section are punishable the same as under Section 1. Section 4 imposed upon the district attorneys of the United States, acting under the direction of the Attorney General, the duty of instituting proceedings in equity to prevent and restrain violations of the law, and it invested the Circuit Courts with jurisdiction over these suits, and with power to issue temporary or permanent injunctions to secure enforcement of the act. Section 6 provides that any property owned by parties to the combinations forbidden in Section 1, in the course of transportation among the states, may be seized and condemned like property imported into the country contrary to law. Section 7 permits any person injured by conduct forbidden in the act to recover triple damages.

A study of the congressional debates [5] on the Sherman

[4] 26 Stat., 209.
[5] Congressional Record, V. 21.

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act and on the amendments proposed, convinces one that the measure as finally passed represented the best thought of the ablest men in Congress. There was an unmistakable determination to pass a law that would put an end to the trusts. The statute not only declared illegal, but also criminal, many abusive practices for which the trusts were notorious. All infringements of its provisions were declared misdemeanors punishable by imprisonment as well as by fine. Five distinct methods of securing the enforcement of the law were provided, together with specific and ample penalties to make any violation of the law a serious offence.

Four years later Congress passed additional trust legislation in connection with the Wilson tariff act with a view to preventing combinations in restraint of trade in the foreign commerce of the country. This legislation in its phraseology and provisions was so nearly like the Sherman law as to need no further mention.[6]

Although the Supreme Court upheld the constitutionality of the Sherman law, the decision in the first trust case passed upon by this court, in 1894, rendered this legislation ineffective. It held that the American Sugar Refining Company, since it was only a "monopoly of the manufacture" of sugar, was not a violation of the law, which prohibited monopoly and restraint of interstate and international trade or commerce.[7] A successful monopoly of manufacture was held not to be an attempt to monopolize commerce even though, in order to dispose of its product, the instrumentality of commerce was necessarily invoked. Later decisions of this court in 1899, 1904, and 1905 restored partial vitality to the act, but it was not until 1911 that the effectiveness of this statute over industrial combinations was practically restored.

Meanwhile, in the absence of any real check, the number, size, and centralization of control of industrial combinations had greatly increased. Many of these were very aggressive and secured for their stockholders immense profits in dividends and stocks. It is true that there were

[6] 28 Stat., 570.
[7] 156 U. S. 10.

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prosecutions, and that some combinations apparently were successful. Fear of prosecution on the part of the rest was shown in the fact that they sought new forms of organization different from those declared illegal. Each succeeding form involved greater difficulties of dissolution.

The failure for many years to abolish or even to prevent a large increase in the number of trusts did not stir Congress to pass any important trust legislation. It was the later decisions of the Supreme Court that restored vitality to the antitrust acts. Many sporadic attempts were made in Congress to revise or amend the trust laws. Only two of these partially succeeded. The Industrial Commission (1898-1902), which was appointed by Congress to investigate various industrial questions, particularly the growth of large scale corporations and trusts, awakened attention to the great size and power of trusts and to their practices regarding stock watering, promotion profits, and unfair competition.[8] The Commission recommended as the chief measure of reform greater publicity under federal direction and control. In 1903, provision was made for a Bureau of Corporations, which should make investigations into the organization, condition and management of corporations engaged in interstate commerce, except common carriers, in order to secure data and information to guide the President in his recommendations to Congress for further legislation.[9] This was a proper step in the direction of publicity, but the powers of the Bureau were inadequate for securing satisfactory evidence. Moreover, it was left to the President to decide what information thus secured should be given to the public. In the same year an expediting act was passed, which gave priority to important antitrust suits in the courts in order to prevent delays. These two measures were relatively unimportant. Thus, while the government was comparatively inactive in prosecuting trusts and the problem was assuming larger proportions, Congress passed no legislation for thirteen years, and no important legislation for twenty-four years.

[8] Reports of Industrial Commission.
[9] 32 Stat., 825.

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The unwillingness to enact the legislation so badly needed, and the failure to accomplish more under the Sherman law, must be largely attributed to the attitude of our administrations and their Attorney Generals. The instituting of suits to enforce the trust laws has been dependent upon the Attorney Generals who in turn are appointed by the Presidents. The Presidents have varied in their attitude towards the trusts and the enforcement of the antitrust laws. The first three during this period, Harrison, Cleveland, and McKinley, were not fitted by training or conviction to lead the struggle against the powerful corporate interests which opposed the enforcement of the laws. Neither were their Attorney Generals better fitted for this task. The failure to win the first important suits tried under the Sherman law discouraged the prosecutors. President Harrison did not mention the Sherman act in any of his messages to Congress after its passage, and his Attorney General did not refer to it until he made his last annual report, and it contained no constructive suggestions. Four bills in equity and three indictments were instituted under the Sherman law during Harrison's administration.[10]

President Cleveland did not take up the trust question until in his last message to Congress, in 1896. In this message he deplored the accelerating growth of trusts and the insufficiency of the law, which did not reach the evil according to the court's interpretation. He then expressed his states' right position by declaring that on account of the complexities of our political system the federal government was powerless to control the trusts in an effective manner, and he expressed great confidence in the ability and willingness of the states to remedy the evils. His Attorney General in the annual report for the same year urged certain changes of a constructive nature, such as supplementing state action, compelling witnesses to testify, clarifying the meaning of the trust laws, and creating an assistant bureau or department. Only four bills in equity and two indictments were instituted during this administration.[11]

[10] The Federal Antitrust Laws, 1916, pp. 44-46.
[11] The Federal Antitrust Laws, 1916, pp. 46-49.

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The McKinley administration, which was much occupied with foreign affairs, was extremely lax in enforcing the trust laws. The President did not mention the Sherman law in his messages to Congress until December, 1899. He then referred to the great increase of industrial combinations, and recommended, in view of the failure of state control, that Congress extend the law to give federal control over these combinations. The Attorney General, Mr. Briggs, in his report for the same year, announced that the department had been governed only by the sincere effort to enforce the law as it existed, and to avoid subjecting the Government to useless expense and the law officers to humiliating defeat by bringing action where there was a clear want of jurisdiction. Due to the President's demand for legislation and the urgency of the situation, a constitutional amendment extending federal control was brought to a vote in Congress, but it failed of passage by a strictly party vote. Each of the leading parties filed a report on the proposed legislation.[12] The majority report (Republican) claimed that impotency was the cause of failure to prevent the trusts; that the problem was one of national scope; and that it proposed to "regulate monopolies." The minority report opposed each of these contentions, attributing the failure to prevent trusts to bad faith in the passage and administration of the laws, as well as to the tariff, and urged both state and federal control, not by regulation, but by the repression of monopolies.

Only three bills in equity, none of which were important, were instituted during this administration of more than four years.[13] The inactivity of the Government is the more significant in view of the fact that this was the period of the greatest trust movement in the world's history. The movement was stimulated by the decision in the Sugar trust case, the subsequent cessation of government prosecution, the rapidly rising prices accompanied with great prosperity, and especially by the activities of trust promoters. The eagerness to form trusts was not primarily to effect any

[12] House Report No. 1501, 56th Congress.
[13] The Federal Antitrust Laws, 1916, pp. 49-50.

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economic or social gain but to secure the benefits of rising prices, and also the immediate profits for the organizers and promoters, the unsoundness of whose promises was painfully revealed to the investing public when an inevitable reaction set in a few years later that reached a crisis in 1907.

President Roosevelt (1901-1909), in his first message to Congress, pointed out the great problem resulting from the growth of consolidation, and in his energetic language urged publicity as the only sure remedy. Two years later a positive step was taken in this direction in the establishment of the Bureau of Corporations. The expediting act was also passed the same year. Following the passage of these acts the President congratulated Congress and expressed a feeling that the problem was nearly solved and that such further slight changes as were needed would easily be secured.[14] But in his 1904 message he showed a growing appreciation of the national magnitude of the whole problem and the need of further legislation. In his later messages President Roosevelt came out definitely for federal regulation by means of a commission which should have control of accounting, publicity, supervision, issue of securities, and the prevention of rebates and discriminations. He recognized some trusts as being "good" and others as "bad." But just as this strong popular administration avoided the unpopular, urgent tariff problem, so it avoided any real constructive effort to deal with the trust problem.

There were three Attorney Generals during this administration. The first, Mr. Knox, made no mention of the trust question until his report for 1903 when he suggested that the $500,000 appropriated in that year to enforce the anti-trust laws, should be divided up for other purposes, such as public land, postal, and naturalization frauds. Later in the same year, by request, he set forth his trust views. He then urged federal regulation, and held that monopoly was impossible if unfair discrimination be eliminated and proper publicity provided. To secure these conditions he urged that a commission with adequate powers be appointed. Mr.

[14] Congressional Record, V. 38, pp. 2-3.

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Moody, who succeeded Mr. Knox, in his annual report for 1906, appeared in harmony with the regulation principle. He held that there were three defects in the antitrust law: its indefinite terms; the forbidding of agreements which ran counter to the tendencies of modern business; and the insufficient means for carrying out investigations. Mr. Bonaparte, who followed Mr. Moody, believed further legislation was needed, but set forth no constructive program. The only interest shown by Congress during the last four years of this administration was in ordering a number of investigations of certain trusts to be made by the Bureau of Corporations. During this administration of over seven years, eighteen bills in equity, twenty-five indictments, and one forfeiture proceeding were instituted.[15]

President Taft's administration witnessed the most vigorous prosecution of the trusts since the passage of the antitrust act. Mr. Taft had been trained in legal procedure. As a Circuit Court judge, he had rendered the decree of dissolution for the Addyston Pipe Combination.[16] After the tariff question was disposed of, the President, in a special message to Congress, clearly set forth his views and recommendations regarding trusts. He explained the chief reasons for creating large combinations. Of these he held there were three: the possibility of great economies; the reduction of excessive competition; and the possibility of securing a monopoly and controlling prices and rates. Mr. Taft also gave three conclusions as to the construction of the Sherman act:[17] first, we must infer that the evil aimed at was not the mere bigness of the enterprise but it was the aggregation of capital and plants, with the expressed or implied intent to restrain interstate or foreign trade, or to monopolize it in whole or in part; second, a combination which only incidentally, and not inevitably or directly, restrained trade, did not fall within the act; and lastly, the act was not to interfere with a great volume of capital concentrated under one organization, which reduced the cost of production and

[15] The Federal Antitrust Laws, 1916, pp. 50-61.
[16] 85 Fed. Rep. 271.
[17] House Report, Doc. No. 484, 61st Cong., 2nd Sess.

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made its profits thereby, and took no advantage of its size to stifle competition. The President then recommended and had presented a federal incorporation bill which was designed to bring all corporations doing interstate business under federal control and supervision as to their issues of securities, reports, and interholding of stock. Although the President worked consistently for this law, it was never passed. He urged that no change be made in the Sherman act, and that it be vigorously enforced. The Standard Oil and American Tobacco decisions of 1911 were proclaimed epoch-making in his message in December. His Attorney General, Mr. Wickersham, in his first two annual reports, simply announced that he was following the policy of his predecessors towards combinations. In his next annual report he declared that the Government's dissolution policy was to create new conditions so that no company would have enough business of any one kind to threaten or accomplish monopoly. In his last report he seemed well pleased with the Sherman act and urged that it should not be made specific by enumerating the practices which would be held illegal. During this administration forty-six bills in equity, forty-three indictments, and one contempt proceeding were instituted.[18]

During the Taft administration, a United States Senate committee of sixteen members was appointed and given large powers and means to inquire and report to the Senate what changes were desirable or necessary in the laws relating to the creation and control of corporations engaged in interstate commerce.[19] In this report, covering 2,799 printed pages of hearings, reports and testimony, the committee emphatically declared that the Sherman law should remain, and that every possible effort be made to create and preserve competitive conditions. The committee was opposed to a general federal incorporation law, but recommended a federal commission and pointed out some of the advantages to be derived from such a body.

The trust agitation, ripened through long experience,

[18] The Federal Antitrust Laws, 1916, pp. 61-68.

[19] Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons, and Firms engaged in Interstate Commerce, 1911-1912, Vols. 1, 11.

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became crystallized in the legislation passed under the Wilson administration. Both of the leading parties by their platform declarations of 1912 were committed to bring about a national trade commission. After the tariff and banking legislation had been disposed of, President Wilson, on January 20, 1914, gave a masterly address before Congress concerning needed trust legislation.[20] Besides other features which were in harmony with the legislation as passed, he offered for consideration the requirement that owners of stock, when their voting power in several companies which ought to be independent of one another would constitute actual control, be made to choose in which company they would exercise their voting right.

The trust legislation passed in 1914 consisted of two acts, the Clayton Antitrust act[21] and the Federal Trade Commission act,[22] the former being supplementary to the existing laws against restraints and monopolies. In outlining the provisions of these acts we are only concerned with those which are important in connection with the antitrust laws and their enforcement.

The Clayton act contained provisions against unfair methods of competition and against combination in restraint of trade. The unfair methods declared unlawful included price discrimination and restrictive sales or leases, where their effect is to substantially lessen competition or tend to create a monopoly in any line of commerce. Section 2 of the act declares it unlawful for any person engaged in commerce to discriminate in price either directly or indirectly, between different purchasers of commodities sold for use, consumption, or resale, within the federal jurisdiction, where the effects of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: provided that this shall not prevent discrimination in prices made on account of differences in quality or quantity of the commodity sold, or on account of differences in costs of selling or transportation, or in order to meet competition, in good faith; and provided further, that

[20] Cong. Rec., Jan. 20, 1914, pp. 1978-9.
[21] 38 Stat., 717-724.
[22] 38 Stat., 730-740.

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this shall not prevent persons from selecting their own customers in bona fide transactions not in restraint of trade. The prohibition of this section is limited in scope by each of the provisos, and by the clause declaring that price discrimination is unlawful only where the effect may be to substantially lessen competition or tend to create a monopoly.

Section 3 declares it unlawful for any person engaged in commerce to lease or make a sale or contract of sale of commodities, patented or unpatented, for use, consumption, or resale, or to fix a price therefor or a discount from such price, on the condition or understanding that the lessee or purchaser shall not use or deal in the commodities of a competitor, where the effect of the sale or conditions may be to substantially lessen competition or tend to create a monopoly.

One of the provisions against combinations in restraint of trade prohibited inter-corporate stockholding (only future changes of stock being affected) where the effect may be to substantially lessen competition with or between the corporations whose stocks are acquired, or tend to create a monopoly. This prohibition does not apply to mere investment by one corporation in the stock of another or to the formation of subsidiary corporations, or to common carriers in extending their lines, where the effect is not to substantially lessen competition. It was aimed at combinations in restraint of trade through stock ownership in the form of a holding company or otherwise. It should be noted that this refers only to corporations, and does not forbid community of stock ownership by individuals. The act also prohibits all corporations, except banks and common carriers, which have a capital, surplus and undivided profits exceeding $1,000,000, from having common directors after two years from the passage of the law, if such corporations are or have been competitors so that the elimination of competition between them would constitute a violation of the antitrust laws. Whether this prohibition of interlocking directorates will increase the number of dummy directors remains to be seen.

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The sections of the act described above contain no penal provisions, but are enforceable through court injunctions, suits in equity, and recovery of triple damages by persons injured through their violation. The federal courts are given a jurisdiction concurrent with that of the Federal Trade Commission, the Federal Reserve Board, and the Interstate Commerce Commission, respectively, in the enforcement of the foregoing sections. It was left to these respective bodies to initiate proceedings whenever they have reason to believe there are violations. The form of procedure is practically the same in each case as is outlined below for the Federal Trade Commission with respect to unfair methods of competition.

Section 6 decreases the legal restrictions upon labor unions and other associations not having capital nor being conducted for profit. It declares that labor is not a commodity or article of commerce, and that nothing in the antitrust laws shall be construed to forbid the lawful existence of such organizations or the carrying out of legitimate objects. Section 20 provides that in any case between employer and employees relating to or growing out of a dispute as to the terms of employment, the courts shall not issue injunctions unless necessary to prevent irreparable injury to the property rights of the applicants. It also provides that an injunction shall not prohibit any person or persons from ceasing to work or persuading others to do so by peaceful means; or from attending at any place where he may lawfully be in order peaceably to communicate information or to persuade any person to abstain from working; or from ceasing to patronize or employ any party to such dispute, or persuading others thereto by peaceful means; or from paying or withholding strike benefits; or from peaceably assembling in a lawful manner for lawful purposes. It further declared that none of these specific acts shall be held to be illegal. The provisions of this section were intended to limit the use of injunctions in labor disputes particularly with respect to "picketing and boycotting."

Other provisions of the act relating to the enforcement

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of the trust laws may be briefly passed. Section 4 provides that any person injured in his property by acts forbidden by the antitrust laws may recover three-fold damages. Section 5 declares that a final decree in a proceeding in equity brought by the Government under the antitrust laws shall be prima facie evidence against the defendant in any suit brought by any other party under those laws, with respect to all matters in which the decree would be an estoppel between the parties. This does not apply to consent decrees which are entered without the taking of testimony or to such decrees in certain other cases. Section 14 provides that when a corporation has violated penal provisions of the laws, its directors and agents authorizing or committing the violation shall be held guilty of a misdemeanor. Section 15 makes it the duty of the several district attorneys and the Attorney General to institute proceedings and bring suits in equity to enforce the act. Section 16 gives the right to relief by injunction for threatened loss or damage by a violation of the antitrust laws.

The Federal Trade Commission act was by far the most important part of the legislation. It created a non-partisan commission to be known as the Federal Trade Commission, consisting of five members appointed by the President with the consent of the Senate. The commissioners, appointed for terms of seven years with an annual salary of $10,000, are forbidden to engage in any other business or employment. The act abolished the Bureau of Corporations, all of whose employees, records, papers, and appropriations were transferred to the Commission.

Both administrative and quasi-judicial functions were given the Commission. Section 5 declares unfair methods of competition in commerce unlawful, and empowers and directs the Commission to prevent such practices by all persons and corporations, except banks and common carriers. To this end the Commission is authorized after due hearing to issue orders requiring the cessation of unfair methods of competition. To secure the enforcement of its order the Commission may apply to the federal courts, submitting the

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entire record of the case, and the court may affirm, modify, or set aside such order. In case it is desired to introduce new evidence before the court, the court may allow it and may order that it shall be taken before the Commission. The findings of the Commission as to the facts, if supported by testimony, are final, and the decisions of the Circuit Court of Appeals are final, subject to review by the Supreme Court. Any party required to cease using unfair methods of competition may obtain a court review in a similar manner. The initiative in bringing proceedings by the Commission to prevent unfair methods was left entirely with the Commission, which could do so whenever it believed such proceedings would be to the public interest. This section of the act, which was intended in part to prevent the development of monopolistic conditions, was of great importance in view of the part played by unfair methods of competition in securing and maintaining monopolistic control.

Section 6 conferred on the Commission the following powers, among others: (1) to investigate the organization, business, management, etc., of any corporations engaged in commerce, except banks and common carriers; (2) to require such corporations to make annual and special detailed reports; (3) to investigate and report to the Attorney General on the manner in which antitrust decrees are being or have been carried out; (4) to investigate and report on alleged violations of the antitrust laws upon the request of the President or either House of Congress; (5) to investigate and make recommendations concerning the readjustments of the business of any corporation alleged to be violating the antitrust acts, upon the application of the Attorney General; (6) to make public information obtained, except trade secrets and names of customers, to make special and annual reports to Congress with recommendations for additional legislation, and to publish its reports and decisions in ways best adapted to public information and use; (7) to classify corporations and make rules and regulations for carrying out the provisions of the laws; (8) to investigate trade conditions in and with foreign countries where

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combinations, or practices of manufacturers, or other conditions, may affect the foreign trade of the United States, and to report and make recommendations to Congress.

Section 7 provides that where suits in equity are brought under the trust laws and the court believes that relief should be granted, the court may refer the suit to the Commission, acting as a master in chancery, to report an appropriate form of decree; but the court may reject the Commission's report and enter a decree according to its own judgment. The need for such an experienced body to assist in framing decrees which call for the reorganization of vast and complex business organizations had become plainly imperative as a result of failure of early dissolution plans employed. How frequently the courts will call upon the Commission for such services, and to what extent they will be guided by its reports, are important questions whose answers will be closely watched. A failure of the courts to co-operate with the Commission may mean additional legislation on this point.

In 1916 considerable effort was made in Congress to pass a bill exempting combinations and corporations formed for the purpose of conducting and promoting foreign trade from the operations of the antitrust laws. This movement had the support of the President and the Federal Trade Commission. The Webb bill authorizing such changes was passed by the House but did not come up for a vote in the Senate. In the same year the Stevens bill, designed to permit manufacturers to fix and maintain uniform resale prices for their products, received much discussion in and out of Congress, but it was not passed.

It is the purpose in the following chapters to trace the progress made in dissolving monopolistic combinations by a concrete study of the more important dissolutions. In general the cases will be treated in their chronological order. A brief history or description of each case will be given in order to point out the means by which the monopolistic control was created and maintained, the extent and nature of the control, the desirability of dissolution, and the elements

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which must be overcome in order to restore competitive conditions. It is believed that such a description is not only essential to an understanding of the nature and probable effectiveness of the dissolution, but that it will also shorten the space required to set forth the facts of dissolution. In some cases, after a brief history is given, only a few lines will be necessary to make clear what was done in the way of dissolution. The description will usually be followed by a consideration of the dissolution and its probable or proved effectiveness. The concrete study of the more important cases will be followed by a chapter giving brief statements of other cases brought to issue under the trust laws.

Much attention is given to the dissolution decrees and decisions of the Supreme Court which have largely determined the status of trust combinations. Congress, Presidents, and Attorney Generals come and go with, at most, only a brief time in which to attempt to solve the trust problem, but the Supreme Court, with a fairly constant personnel, has been constantly confronted with the trust problem in all its phases. This Court, in addition to other tasks that pile up faster than they can be analyzed, has been burdened with the rapidly growing problem of controlling concentrated wealth and industry, one of the most vital and intricate of our national problems, and one which demands experts for its solution.

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CHAPTER II

DECISIONS AND DISSOLUTION DECREES UNDER THE SHERMAN LAW 1890–1910

THE first suit filed under the Sherman law was against the Nashville Coal Exchange which was composed of various coal mining companies in Kentucky and Tennessee and of coal dealers in Nashville. The exchange was formed for the purpose of fixing prices and regulating the output of coal. In 1891, the Circuit Court declared the combination to be illegal and enjoined its continuance.[1] No appeal was taken from this decree.

The first important suit filed under the law was against the Whisky Trust (the Distilling and Cattle Feeding Company), which was organized in 1887, and which was a very large and well known trust in the early days of industrial concentration.[2] By means of the "trustee device" the properties and management of seventy-two distilling companies were turned over to a group of trustees in exchange for certificates representing equities in the combined properties. The certificates formed the basis upon which the dividends were distributed. Under this central control, sixty of the companies were discontinued and the business of the trust was confined to the remaining twelve. In 1892 the Government filed suit against the combination, but the charges were quashed in the Circuit Court on the ground that they failed to set forth an indictable offense.[3] What seems more significant than this initial defeat was the abandonment of all further attempt to prosecute the Whisky trust. After becoming involved in financial difficulties the trust was dissolved in 1896.

[1] 46 Fed. Rep. 432.
[2] 50 Fed. Rep. 469.
[3] 50 Fed. Rep. 471.

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The second important industrial suit was against the National Cash Register Company. This company, with perhaps the exception of the Standard Oil, surpassed all the trusts whose history is known in the use of unfair methods of suppressing competition.[4] It was chiefly due to such methods that the company early obtained a monopoly control of 82 percent of the cash register business, and later increased it to 95 percent.[5] In 1893, suit was brought against the officers of the company. The Court found true the charges of "intent to engross, monopolize and grasp, and of means clearly unlawful and adapted to accomplish this intent" [6] of monopolizing the cash register trade, but the suit was allowed to lapse because the complaining witness entered into the combination of the defendants.[7] The failure to prosecute had a bad moral effect and showed the lack of zeal on the part of the prosecutors. The injury to the public was apparently not considered of much importance at that time. Nearly two decades passed before another suit was heard against the company or its officers. In the meanwhile, the company continued its unfair practice and controlled as high as 95 percent of the business from which it derived large earnings.

The Sugar Trust Decision

The suit against the E. C. Knight Company, the "Sugar Trust," was the first trust case decided by the Supreme Court, and the decision was of great future importance. This trust had been more conspicuous than any other. Its political influences had long been known and the excessive prices for such a commodity as sugar were particularly objectionable.

Sugar refining naturally lends itself to monopoly, but in this case it was easier to bring about and more profitable because of protective tariff duties.[8] During a period of

[4] See pp. 194-199.
[5] 201 Fed. Rep. 699.
[6] 55 Fed. Rep. 641; Fed. Rep. 641.
[7] The Federal Antitrust Laws, 1916, p. 46.
[8] Taussig, Tariff History of the United States, p. 310.

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keen competition in the late '80's many refineries went out of business. Following this seventeen of the twenty remaining companies entered into an arrangement whereby the properties and management of the companies were turned over to a group of trustees in exchange for trust certificates which represented equities in the combined properties. The trustees discontinued twelve of the corporations and consolidated the remaining eight into four. The capital stock of the combination, which was $50,000,000, represented property worth only about $6,590,000.[9]

This trustee device was declared illegal by the New York State Court of Appeals in 1890, and the charter of the company was revoked. The American Sugar Refining Company of New Jersey then became the organization of the combining sugar interests. The advance in sugar prices made by the trust had brought many new competitors into the field. The combination acquired most of these, often paying enormous sums. By 1892 only five independent refineries remained. Four of these were in Philadelphia, the largest being the E. C. Knight Company. The four companies controlled 33 percent of the total output and their acquisition in that year gave the combination control of 98 percent of the output.[10] To accomplish this purchase the capital stock was increased to $75,000,000.

In 1894, the Government brought suit against the E. C. Knight Company and others, charging that the purchase of the four Philadelphia refineries was made for the purpose of controlling the price of sugar, and it asked that the purchase be declared void. The Supreme Court declared that the defendants had created a monopoly in the manufacture of sugar, but held that the Sherman law did not give the courts power to "deal with monopoly directly as such, or to limit and restrict the rights of corporations created by the States or citizens of the States in the acquisition, control or disposition of property."[11] Such power could only be used to repress monopoly that comes within the rules by which commerce is governed or whenever the transaction

[9] Century Magazine, V. 65, p. 471.
[10] 60 Fed. Rep. 307.
[11] 156 U. S. 16.

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itself is a monopoly of commerce. It was held that the purchase of the refineries was for the object of manufacturing sugar and bore no direct relation to interstate commerce. An attempt or even a successful monopoly of manufacture was held not to be an attempt to monopolize commerce even though the instrumentality of commerce was necessarily employed to dispose of the product.[12]

Justice Harlan gave a dissenting opinion in which he held that interstate commerce did not consist in transportation simply, but included the purchase and sale of articles intended to be sold among the states, as well as every species of commercial intercourse. He declared that the present case came fully within the Sherman law, which he believed was primarily intended to free commerce from a combination controlling at its own discretion the price of an important commodity. If the sugar company did not come within the scope of the act, then there was no legal prohibition against any combination from obtaining complete control of important commodities, such as oil, cotton, flour, meat, or other necessities. This dissenting opinion was the one later adopted by the courts.

The Knight decision destroyed the effectiveness of the Sherman law for many years. The sugar trust, which had been driven from New York, was allowed to continue its monopoly under the laws of New Jersey unmolested. Many other monopolistic combinations sought shelter under the laws of this state. Had the prosecution been prompt and successful the trust problem might never have grown to such large proportions. The failure of the suit against one of the chief trusts of the day weakened faith in the effectiveness of the law and discouraged further efforts to enforce it. The world's greatest trust movement soon took place in this country before the effect of this decision was overcome.

The American Sugar Refining Company has continued its large and profitable business to the present day. Its percentage of the enlarged business, however, is not so large as in 1894. A suit to dissolve the company is now pending

[12] 156 U. S. 17.

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in the Circuit Court, twenty-three years after the above decision was given.[13]

The Addyston Pipe and Steel Combination

Following the defeat in the sugar trust case no important suits against industrial trusts were attempted for a number of years. This lull was due to several influences among which may be mentioned the Knight decision, the serious business depression from 1893-6, and the lack of sympathy, and even hostility, on the part of several Attorney-Generals toward enforcing the trust laws. The opportunity for bringing suits against well known offenders was not lacking. It is significant that the first important application of the Sherman law was upon the labor unions, organizations perhaps the least of all intended to come within its scope. It was rather a law against capitalists. One of the earliest labor union suits under the law was against Mr. Debs and others who were directing the Pullman Car strike in 1894.[14] The defendants were enjoined from interfering in interstate commerce and obstructing the mails and they were promptly punished later when they disobeyed the injunction.

The second important application of the law affected the railroads, another class of organizations which it is doubtful whether the framers of the law intended to include. The Supreme Court decisions in the Trans-Missouri Freight Association case[15] in 1897 and the Joint Traffic Association case[16] in 1898 held that agreements among common carriers to fix rates, even though the rates were reasonable, were restraints of trade in violation of the Sherman law. In the latter year two suits against live stock associations—the Kansas City Stock Exchange and the Traders Live Stock Association of the same city—were decided against the Government by the Supreme Court. The defendants of

[13] See p. 275.
[14] 158 U. S. 564.
[15] 166 U. S. 290.
[16] 171 U. S. 505.

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the former were held not to be engaged in interstate commerce,[17] as in the Knight Case, and those of the latter were declared not to be interfering even though their business were adjudged to be interstate commerce.[18]

It was not until 1899, nearly a decade after the passage of the Sherman law, that the second industrial trust case was decided by the Supreme Court. This was a suit against the Addyston Pipe and Steel Combination which was the first one dissolved under the law.[19] The combination, formed in 1894, included six companies engaged in the manufacture and sale of cast iron pipe. The companies entered into an agreement to raise and control the price of their product in territory covering more than three-fourths of the country. Exhibits of the minutes of the organization showed an extended system of bonuses; the division of the country into pay territory, free territory, and reserved cities; allotments of the business; and price making agreements.[20] In order to carry out the price policy, a central board consisting of representatives of the companies was appointed to receive all bids and to let all contracts so that the company securing the order should be protected by the other companies. The products were largely sold by contract to municipal corporations, gas or water companies, and other large institutions which usually invite bids from various competitors. After the successful bidder had been determined by the auction pool, or had been fixed by the arrangement as to reserve cities, the other members of the combination put in bids as high as the selected bidder requested in order to give the appearance of active competition.

A suit was brought in 1896 to enjoin the operations of the combination. The case was dismissed by the lower court but it was remanded back by the Circuit Court of Appeals with instructions to enter a decree for the Government. In 1899 the Supreme Court unanimously held the Addyston combination to be illegal and perpetually enjoined

[17] 171 U. S. 579.
[18] 171 U. S. 604.
[19] 175 U. S. 211.
[20] 175 U. S. 214.

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the defendants from maintaining it and from doing any business under the arrangements.[21] Seven years later, the Supreme Court permitted the city of Atlanta to recover under the Sherman law triple the excess price paid on products purchased from the combination which resulted from the semblance of competition set up by it.[22]

The importance of the Addyston decision was the broadening of the interpretation of the Sherman act, which had been limited in the Knight decision, in holding it to apply to a combination whose business was primarily manufacturing or other activity even though it might be subject to state rather than federal legislation. It was the first important dissolution of industrial monopoly under the act, and may have been a factor in checking the great trust movement which was at its height. It strongly discouraged combination in the form of a pool.

The National Harrow Company

Due to the extremely lax enforcement of the antitrust laws during the McKinley administration there was an interval of nearly five years following the Addyston decision before another real trust case was brought before the Supreme Court. During this time few suits of any kind were filed under the law. One of the more important was a suit brought by the National Harrow Company against Mr. Bemmet. The decision in this case shows the exclusive character of our patent rights. The company owned patents covering the manufacture of spring-tooth harrows and sold to others a license right to manufacture the harrows. Under the binding terms of its agreements, the particular kinds of the harrows which could be made by the licensee, the price and terms of sale for each, and the territory where each could sell were stipulated. In 1897 the company brought suit against several licensees who did not abide by all the provisions of the agreement, claiming that the con-

[21] 175 U. S. 211.
[22] 203 U. S. 390.

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tracts were illegal. The lower courts held that the contracts were illegal, and no appeal was made.[23]

In 1902 the National Harrow Company carried a test case before the Supreme Court. This was a suit against Mr. Bemmet, a licensee, who refused to keep his contract requirements with the company on the ground that it was illegal under the Sherman law. The Supreme Court held that the company was, at the time the license was executed, the absolute owner of the patents relating to the spring-tooth harrow business, and was "therefore the owner of a monopoly recognized by the Constitution and the Statutes of Congress * * * The general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly * * * (and) the fact that the conditions in the contracts keep up monopoly or fix prices does not render them illegal." [24] It found "no purpose to stifle competition in the harrow business than the patents provided for." [25] The clause prohibiting the licensee from making other harrows than those stipulated in the contract was held to be legal.

While the exclusive character of patents was well known, this decision strengthened the tendency to secure monopolistic control on the basis of patent right. It will be pointed out later how the control of several important industries was secured and maintained largely by the use of restrictive and exclusive contracts in connection with the manufacture, sale, and use of patented machines, processes and products.

The Northern Securities Company

The first decision, following the Addyston, which helped to broaden the construction and application of the Sherman law respecting industrial monopoly was in the Northern Securities case.[26] This decision, rendered in 1904, had an

[23] 83 Fed. Rep. 36.
[24] 186 U. S. 91-2.
[25] 186 U. S. 92.
[26] 193 U. S. 197.

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important bearing upon the future form of monopolistic combinations.

The question as to whether the Sherman law applied to railroads had been decided by two earlier decisions. In the Trans-Missouri Freight Association decision in 1897, an agreement made between the Atchison and seventeen other railroads, whereby the rates were to be determined, was declared invalid under the law on the ground that the districts served by the railroads were deprived of the benefits of competition.[27] In the following year the Joint Traffic Association, composed of thirty-two railroads operating between Chicago and the Atlantic Coast, was declared illegal.[28] The latter association was formed for the purpose of maintaining, jointly, through the medium of a managing board the freight and traffic rates already in force. It was declared illegal upon the same ground as in the preceding case.

The principal facts concerning the Northern Securities Company can be briefly stated.[29] In 1901, under the leadership of J. J. Hill and J. P. Morgan, the stockholders of the Great Northern and Northern Pacific railroad corporations, having competing and substantially parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean at Puget Sound, formed the project of combining the two companies. The primary need for both companies was an independent entrance into Chicago; and it was evident that a single road entrance would amply suffice for the two. The Burlington system, which had the necessary Chicago connection, and also gridironed a rich and populous territory of its own, was acquired for this purpose in 1901. By the terms of purchase the Northern Pacific and Great Northern were each to receive one-half of the $108,000,000 of Burlington stock; and were to pay for it in joint long-time collateral trust bonds. About 97 percent of the Burlington stock was secured and deposited in trust as security for the new bonds.

[27] 66 U. S. 290.
[28] 171 U. S. 505.
[29] 193 U. S. 320 et seq.; Ripley, Railroad Finance and Reorganization, pp. 491-9.

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The foregoing transaction was bitterly opposed by the Harriman-Union Pacific interests, who also sought the Burlington system, which would give the Union Pacific, terminating at the Missouri River, connection with Chicago. The Harriman forces then attempted to secure control of the Northern Pacific by bidding for the stock in the open market, and through the latter secure a half interest in the Burlington. A stock market panic resulted on May 9, 1901, and Northern Pacific stock sold as high as $1,000 a share. The Harriman interests succeeded in obtaining a majority of the total amount of stock, but their majority consisted largely of preferred shares which could be retired on any 1st of January prior to 1917, that is before the Harriman interests could get an opportunity to vote the shares and insure the coveted control. The potential power of retiring the preferred shares generated a conciliatory attitude on the part of the Harriman forces. The Hill-Morgan interests were allowed to recover by purchase a majority of the Northern Pacific stock. In order to prevent the recurrence of such a situation, a holding company was planned which should hold the stocks of the two roads. The Northern Securities Company was organized for this purpose, with a capital stock of $400,000,000, and upon an agreed basis of value the shareholders of the two railroad companies exchanged their stock for the stock of the holding company.[30] In this way, the Securities company became the custodian of more than nine-tenths of the Northern Pacific stock and more than three-fourths of the Great Northern. The two roads were conducted as one system for the exclusive benefit of the stockholders of the Securities company. Competition practically ceased, and the earnings of the two roads were put into a common fund to be distributed to the shareholders of the Securities company.

In 1902, the Government brought suit under the Sherman law to dissolve the company. The Circuit Court in 1903 ordered the company to be dissolved, and in the following year the decree was affirmed by the Supreme Court.[31] The

[30] 193 U. S. 327-8.
[31] 193 U. S. 327.

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latter declared that no scheme or device could more certainly come within the prohibition of the law, or could more effectively suppress competition. It held that the entire commerce of the immense territory served by the two roads was at the mercy of a single holding company, organized in a distant state. It enjoined the company from exercising any further control over its stock, but permitted the company either to transfer the stocks of the two railroads held in its treasury to their former owners, or to distribute them to the present stockholders of the Securities Company. The Morgan-Hill parties chose the latter plan and proceeded to make a pro rata distribution, but the Harriman interests objected to this plan, which gave a majority of the Northern Pacific stock to Hill and his friends, and demanded that the original stocks of the railroads be returned to their former owners. The contest was carried to the Supreme Court which decided in favor of Hill and his friends. Had Harriman won he would have recovered his former control over the Northern Pacific.[32] The dissolution left the Northern Pacific in the hands of its transcontinental rival, of Hill and his friends who held a majority of the Securities company's stock and received a like majority of the stocks of the two railroads.[33] The Harriman forces received minority holdings in each of the two roads.

Alexander D. Noyes cites the following results of the dissolution: "Predictions of great financial demoralization were common when the Northern Securities had been finally ordered to dissolve; yet the dissolving of that holding company was accomplished with a minimum of friction or disturbance, and along with a great advance in the stock exchange prices. The business of the constituent companies went on as usual. Not only so, but the Union Pacific Treasury, which retained its holdings during the litigation and through the dismemberment of the holding company, * * * sold the bulk of its investment two or three years later at a profit of $34,000,000." [34] The total profits for the Harri-

[32] 197 U. S. 258-9.
[33] Ibid., p. 244.
[34] The Forum, V. 43, p. 43.

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man interests resulting from this extraordinary venture were approximately $82,943,000.[35]

William Z. Ripley, writing in 1915, says that "Since the legal dissolution of the Northern transcontinental monopoly in 1905, no outward change, so far as the public is concerned, is apparent. Harmony in rate policy has been unbroken; and in all subsequent changes in rates, all roads have practically acted as a unit. This is undoubtedly because substantial blocks of the stock of both main lines are still lodged in the same hands. At all events, everything, except competition in facilities had ceased, and both roads continued in control of one-half each of the Burlington system. Nor has the latter ceased to expand in the interests of its joint owners." [36] In 1908, the Colorado and Southern was purchased through the Burlington company. This purchase gave the Great Northern and Northern Pacific an outlet upon the Gulf of Mexico, and by adding 2,500 miles increased the total mileage of the affiliated systems to 25,000.

In this dissolution the legal requirements were apparently considered of more importance than a proper distribution of the equities. The dissolution left the control of the two great railway systems in the hands of a few persons who constituted a "controlling community of interests." It did not restore competition. Its chief significance was the firm declaration that not even a state, still less one of its artificial creatures, can stand in the way of enforcing the federal antitrust laws. It put an end to the holding company as a legal instrumentality for the attainment of monopoly, and monopolistic combinations seldom took this form. Many sought refuge in the consolidated corporation or in some system of co-operation. The chief purpose in the latter was to secure a harmony of policy among competitors regarding volume of output and prices through tacit understandings and the exchange of information. These arrangements were generally known as a "gentlemen's agreement."

[35] Ripley. Railroads, Finance and Reorganization, p. 506.
[36] Ibid., p. 499.

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The Miles Medical Company

The Miles Medical Company decision, rendered in 1911, limited the scope of power conferred by patent rights. This company, which manufactured patent medicines, sought to control directly the entire trade in the medicines it made. To accomplish this the company employed two forms of restrictive contracts.[37] One form was signed by over 400 jobbers and wholesale dealers and the other form by more than 25,000 retail dealers. In either form the jobbers or dealers agreed not to resell below the prices fixed by the company. Only those who signed the contracts could obtain the medicines. In this way, the company fixed the price of its products for the jobber, the retail dealers and the consumer.

Suit was brought by the company against Park and Son's Company, jobbers, who had not signed the binding contracts and were selling the company's medicines to retail dealers at cut prices. The retail dealers were at liberty to sell to consumers at their own price. Park and Son's procured the medicines at cut prices from other wholesale dealers who violated their contracts with the Medical company. The company complained that the sales at reduced prices injured the business of the other retail dealers selling their medicines, and also that it damaged the company's reputation.

The Supreme Court held that the wholesale dealers and jobbers were the owners of the medicines purchased from the company and that the restrictive contracts, which eliminated competition among most of the wholesale dealers and jobbers, as well as among a majority of the retail druggists of the country, were illegal under the Sherman law.[38] It declared that the holder of a patent did not acquire thereby the power to fix future retail prices of the product.

The Meat Packers' Combination

The fourth important decision which helped to establish the scope and meaning of the antitrust law respecting indus-

[37] 220 U. S. 374-394.
[38] 220 U. S. 399-400.

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trial monopoly was in the Beef Trust or Meat Packers' case. The packers' combination affected all classes of people and all sections of the country.

The center of the live stock industry had passed the Missouri River in its westward movement by 1890. Ten years later two-thirds of the cattle, including most of those raised for beef, were produced west of this river. The shifting of the industry was determined largely by the grazing and grain districts of the West. The slaughtering and packing industry tended to follow the movement of the live stock industry. The shifting of the former depended largely upon improvements in the methods of preserving and transporting meat. With the invention of the refrigerator car in 1868, the packing industry rose rapidly in the West.

The economies and advantages of marketing live stock at a few centers, and of slaughtering and packing in relatively large establishments resulted in concentrating the slaughtering industry of the West in a relatively few large packing centers. About 60 percent of the total value of the output from slaughtering and packing establishments in 1903 was slaughtered at Chicago, Kansas City, South Omaha, St. Louis, and St. Joseph. In this year 3,000,000 head were slaughtered at Chicago. This was four times as many as at any other center.

For some years prior to 1904 the bulk of the slaughtering and packing was done by six companies. The names and capital stock of these companies in that year were as follows:[39]

Name	Capital Stock
Swift and Company	$35,000,000
Armour and Company	20,000,000
National Packing Company	15,000,000
Nelson, Morris and Company	6,000,000
Schwartzschild and Sulzberger Co	5,000,000
Cudahy Packing Company	7,000,000

The first four companies named were known as the "Big Four," while the six were often called the "Big Six." Each

[39] Report of the Commissioner of Corporations on the Beef Industry, 1905, p. 10. Hereafter this source will be referred to as the Report of Bureau.

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of the companies controlled from three to twenty-four subsidiary companies.[40] None of the companies were over capitalized. The stock of each, except in the case of the Swift company whose stocks were listed on the stock exchange, were largely held by a few individuals, and exchanges of stock were infrequent. With the exception of the National Packing Company, the stock of the different companies were held by separate groups of shareholders. The National had been organized in 1902 by the other three members of the "Big Four" group, the Swift, Armour, and Morris interests, who held all of its capital stock. The company was used to acquire control of the principal packing plants at St. Louis, Omaha, Kansas City, and certain other cities. It also acquired or established a large number of branch houses, selling agencies, and stock yard interests. The joint ownership in this company firmly established the community of interest among the "Big Four" companies. Publicity concerning the affairs of the companies was almost negligible.

The dominant position of the companies in the beef industry is shown by the proportion of the business done by them. The six companies killed 5,503,714 head or about 90 percent of the cattle inspected for slaughter in all the cities east of the Rocky Mountains in 1903.[41] Of this number 5,206,983 head were killed at eight of the leading western markets where the six companies did 97.7 percent of the business. The high percentage is significant in view of the fact that over three-fourths of the beef cattle are in the district lying west of Chicago and east of the Rocky Mountains. The rest of the country depend largely upon the surplus of this region for its beef supply. Of the cattle slaughtered at the eight leading western markets in 1903, the six companies had 100 percent of the business at Omaha, Fort Worth, and Sioux City; 99.6 percent at Kansas City; 99.1 percent at St. Joseph; 97.5 percent at St. Paul; 96.5 percent at St. Louis; and 95.8 percent at Chicago.[42]

The proportion of the total supply of beef sold by the six companies was large, but it varied much between dif-

[40] Report of Bureau, pp. 28-30.
[41] Ibid., p. 58.
[42] Ibid.

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ferent sections of the country and also between towns of different sizes. In some sections their control was almost complete. They sold from 70 to 75 percent of the fresh beef consumed in New York and vicinity, 60 to 75 percent in Pittsburg, and 45 percent in Philadelphia.[43] The smaller towns depend less upon the large packers than the larger cities. From computations based upon a large number of towns the Bureau estimated that the six companies furnished the following proportion of the beef supply: towns having a population of 2,000 to 5,000, 30 percent; 5,000 to 10,000, 40 percent; 10,000 to 50,000, 55 percent; 50,000 and over, 60 percent.[44] The six packing companies sold 75 to 85 percent of the fresh beef consumed in New England; 50 to 75 percent in New York, New Jersey and Pennsylvania; 20 to 25 percent in the Southern, Central, and Western States; and 15 to 20 percent in the Mountain and Pacific States.[45]

These figures indicate the nature of competition encountered by the packers. The large packers have no competitors who ship beef extensively and only a few who ship any at all. The more important competitors are the large local slaughtering establishments in the larger cities. The ability of the latter to compete with the packers depends upon (1) a local supply of beef cattle which saves freight charges; (2) efficient plants to utilize by-products; (3) upon the preference of consumers for locally killed beef. Other competitors consist of local butchers in the smaller towns. Since the big packers had no particular advantage in patents and no direct control of raw materials, and since the capital requirement for setting up local slaughter houses was not large, local competition tended to spring up whenever the margin of profit permitted.

One advantage secured by the large packers resulted from owning their own spur lines and shipping cars. The six companies owned about 25,000 cars in 1904.[46] These included refrigerator, fruit, packing, stock, tank, and a few box cars.

[43] Report of Bureau, p. 67.
[44] Ibid., p. 73.
[45] Ibid., p. 74.
[46] Ibid., p. 270.

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In owning their own cars the packers were less dependent upon the railroads and were provided with adequate transportation facilities at all times. It also enabled them to secure excessive mileage payments from the railroads for the use of spur lines and cars and this in effect was to secure rebates. Some of the packers also had their own ice-packing stations to repack their cars while in transit.

While the report of the Bureau does not give the proportion of hogs and sheep slaughtered by the six companies, it shows that the bulk of the business in these branches of the industry is also concentrated in the chief western beef packing centers. The six companies which dominate these centers so completely appear to control the packing of hog and sheep products in a similar way.[47] They slaughtered about 14,000,000 hogs and 6,000,000 sheep in 1903.

The figures of the Bureau show that the margin between cattle prices and beef prices was $2.02 per hundredweight from July 1, 1902 to July 1, 1903, and for the succeeding year when cattle prices were much lower the margin was $2.10.[48] The packers received less for the carcass than they paid for the live animal, depending upon the hides and other by-products to make up the difference and to leave a profit. The beef itself made up only about three-fourths of the selling value, by-products making up the other fourth. Of this fourth, hides made up about half of the value. The value of by-products ranged from $9.50 to $12.00 per head during the years 1902 to 1904.

The profit derived from the beef industry by the packers was computed to be about $1.00 per head.[49] However the Bureau believed that there might be an additional profit per head not to exceed fifty cents derived from subsidiary manufacturing processes and the use of private car lines and cars.[50] This may seem small but as the number of beef cattle slaughtered was about 7,000,000 annually the aggregate was considerable. There was also the profit derived from the slaughter of about 20,000,000 head of hogs and

[47] Report of Bureau, p. 11.
[48] Ibid., p. 268.
[49] Ibid.
[50] Ibid., p. 34.

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sheep, and from handling of other products such as fruits and eggs. If rebates were received, as alleged by the Government, the profit would be further increased. The packers secured from 14 to 17 percent upon the investment in their car line business.[51] For some companies the rate ranged from 17 to 23 percent. These excessive profits came wholly from payments allowed by common carriers, and were in effect rebates. They gave an enormous advantage over would-be competitors.

The packers who dominated the industry used various means to restrict meat prices throughout the country.[52] They united in requiring their purchasing agents to refrain from bidding against each other, except perfunctorily and without good faith. This compelled owners of stock to sell under non-competitive conditions. In a similar way they had their agents to bid up the prices for a few days at a time to induce large shipments of stock and then reduced the price. The packers also combined to fix and maintain uniform prices at which they sold their products to dealers. The price agreements, which were effected at secret meetings, were enforced by imposing penalties for violations, by establishing a uniform rule of credit to dealers, by keeping a black list of delinquent dealers, by refusing to sell meats to dealers who departed from the set prices, and by restricting shipments of meat. The packers also established uniform cartage charges for the delivery of meat sold to consumers where no charge could be maintained except by united action. They were also aided in monopolizing the trade through rebates and concessions from the railroads.

Viewed as a whole, the monopolistic control of the combining packers was not very permanently secured. It did not have direct control of the raw materials nor have control of essential patents. The control was largely dependent, first upon the co-operation of separately owned companies to depress live stock prices and to maintain sale prices of fresh meat products, and, second upon outside aids, chief among which were tariff duties, railroad concessions and rebates received through excessive allowance for private cars,

[51] Report of Bureau, pp. 283-5.
[52] 196 U. S. 391-3.

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stockyards, and spur lines. The economies of large scale production could not be materially increased through combination among the large packers. Also, local competition was present in various degrees in the stock-growing regions and this could be extended somewhat whenever the margins of profit became great enough. However, the monopolistic control of the packers in so great a necessity of life was so effectively maintained and used as to concern greatly both the consumers and live stock growers.

In 1902, the Government filed a petition under the Sherman law, alleging that seven corporations, including the "Big Six" companies and one other, and twenty-three individuals had entered into a combination and conspired to suppress competition in the purchase of live stock and in the sale of beef, and to monopolize the fresh meat trade, by the various means described above. The defendants did not contest the charges and in 1903 the Circuit Court entered an injunction prohibiting all the acts charged by the Government.[53] The Supreme Court sustained the decree of the lower court by a unanimous vote early in 1905.[54] Such combination as had existed among the packers was perpetually enjoined. There appeared to be no doubt on the part of the courts that the Sherman law applied to such a combination and practices.

One of the chief weaknesses of the decree was the failure to dissolve the National Packing Company. It was the joint ownership of the extensive assets of this company, which were strategically located throughout the country, by the other members of the "Big Four" group that gave the combination much of its stability. In view of the relations existing among the largest packing companies, and of the proportion of the business controlled by them, a restraining injunction could hardly be expected to restore competitive conditions.

Unfortunately this was not the end of combination among the packers. In March, 1905, the Government secured an

[53] 122 Fed. Rep. 529.
[54] 196 U. S. 375.

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indictment against those who were the chief defendants in the preceding suit, charging that they were continuing to conduct their business in ways enjoined by the decree. The defendants now claimed immunity from criminal prosecution on the ground that they had been compelled to incriminate themselves through information given at the request of the Bureau of Corporations. After a year of litigation the court gave a decision in favor of the claim of immunity as to the natural persons but not as to the corporations.[55] No appeal could be taken from this decision, and as a result the individual packers were completely freed from prosecution. Thus the prosecution under the Sherman law failed on a point of law after an injunction decree had been obtained. The decision in favor of immunity gave rise to the phrase "immunity bath" and it aroused strong public protest. This easy way of avoiding prosecution was promptly removed by an act of Congress which limited immunity to natural persons giving testimony or evidence under oath in obedience to a subpœna. The public dissatisfaction at this time was further increased by Upton Sinclair's sensational novel, "The Jungle," and by several federal investigations, each describing the unsatisfactory sanitary conditions in the packing industry. These disclosures led to an act of Congress in 1906 which provided for rigid regulation and inspection of meat slaughtering and packing.

The legal war against the packers was destined to continue for many years. Many investigations of the alleged beef trust were made. Near the close of 1906 a federal grand jury began an investigation which was soon discontinued. Three years later the investigation was resumed, and in 1910 an indictment was returned against the National Packing Company and ten subsidiary concerns, charging a combination to restrain trade in fresh meats. At the same time a dissolution suit was filed against the same defendants on the same charges.[56] The latter was soon dismissed in order to facilitate the prosecution of the former which was later quashed. A special grand jury was called to renew the in-

[55] 142 Fed. Rep. 976.
[56] The Federal Antitrust Laws, 1916, p. 62.

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vestigation, and this resulted in the return of an indictment against ten of the chief packers, including the leaders of the "Big Four."[57]

In the meanwhile the packing industry had grown rapidly from 1905 to 1912. Since the business of the Big Four companies increased almost proportionally, the Swift company may be used to illustrate. The capital stock of the Swift company increased from $35,000,000 to $75,000,000 in seven years, and its sales from $200,000,000 to $300,000,000.[58] The regular cash dividends of 7 percent amounted to $28,962,500 for the period while the total earnings were $52,777,655, or nearly double this amount. The annual fluctuations in the earnings were not large, tending to show the absence of strong competition. The company had 7,731 cars in service in 1912 which were used in transporting its products.

The trial of the ten packers, including J. O. Armour, L. F. Swift, E. Morris, and E. Tilden, was concluded early in 1912. In addition to the general charges of violating the Sherman law, the packers were charged with refraining from bidding against each other for live stock, with fixing prices of meat in the branch markets, and with conspiring through the National Packing Company to arrange prices, to exchange information, and to distribute the buying orders for each week's business.[59] After a trial lasting over three months the packers were acquitted. This verdict was sharply criticized by the public press.

Because of aroused public opinion and an impending dissolution which was being prepared by the Government against the National Packing Company, the leaders of the Big Four companies soon after their acquittal notified the Government of their intention to terminate their joint ownership in the National Packing Company by dissolving it. The dissolution was carried out in 1912 and approved by the Government. No doubt the vigorous trust prosecution which had just brought about the dissolution of a number of large

[57] The Federal Antitrust Laws, p. 64.
[58] Moody's Manual, 1913, pp. 1657-8.
[59] Outlook, V. 96, p. 144.

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combinations was effective in leading the packers to take this action.

In dissolving the National Packing Company the distribution of the assets was based upon share holdings in the company. The $15,000,000 of outstanding stock were held by the Swift, Armour, and Morris interests. In dissolving the company, the Swift interests received 46 percent of the assets, the Armour interests 40 percent, and the Morris interests 14 percent.[60] The Swift interests received 16 packing plants and stockyard interests and control of 84 branch houses and selling agencies. The Armour interests received 10 packing plants and control of about 75 branch houses and selling agencies. The Morris group received 4 packing plants and control of about 30 branch houses and selling agencies. Thus, after nine years of litigation the packers somewhat admitted of having an illegal combination by voluntarily dissolving it, under the pressure of public opinion and new impending prosecution.

There is no evidence to show that any material changes were effected by the dissolution. The complaint of the public press temporarily subsided, but is rising again. During the three years following the dissolution (1913-1915), the Swift company increased its sales to $500,000,000 annually.[61] In the last of these years 11,000,000 head of live stock were handled by the company, and the earnings for the year were $14,179,362 or 19 percent on the capital stock. The lowest annual earnings during these years were much higher than those of any previous year. During the fourth year following dissolution (1916) the sales of the company rose to $575,000,000, and the earnings rose to $20,465,000, or to 28.6 percent on the capital stock which had been more than doubled from 1905 to 1912. President Swift said the profits for the year amounted to one-half a cent per pound of output.[62] In this year the earnings of the Armour company were $20,100,000, or over 100 percent on its $20,000,000 of stock which had not been increased since 1904.[63] Both com-

[60] The Chronicle, V. 95, pp. 547-8.
[61] Moody's Manual, 1916, pp. 3571-3.
[62] The Chicago Daily Tribune, Jan. 5, 1917, p. 16.
[63] Ibid., Jan. 15.

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panies have increased their capital stock to $100,000,000 by the declaration of a stock dividend.

In 1915, five packing companies, including the Swift, Armour, and Morris companies and two of their subsidiaries, were each fined $25,000 by the Missouri Supreme Court for violating the state antitrust laws.[64] The defendants made an appeal from this decree, but the appeal was dropped late in 1916 as part of an agreement with the Court by which the companies agreed to pay half of the fines and to give a written promise to obey the laws of the state and the orders of the Court. In the latter year a resolution was introduced in Congress to have the Federal Trade Commission make an investigation of conditions in the packing industry. This resulted in intermittent hearings before a sub-committee of the house judiciary committee. At these hearings the cattlemen claimed, among other things, that the packers exercised undue control over the animal industry through their control of the stock yards by refusing to buy animals before 10 or 11 o'clock in the morning in order to allow greater shrinkage to take place; by refusing to sell sites around the yards for building competing packing establishments; and by refusing to bid against each other for live stock. Despairing of action on the resolution by the committee or by the House, Congressman Doolittle of Kansas filed a copy of the hearings and charges against the packers with the Federal Trade Commission.

In conclusion it may be said that conditions are still very favorable for maintaining combination among the packers through a "gentlemen's agreement." It is doubtful whether any investigation could reveal the extent and effects of collusion among the big packing companies; their agreements always have been elusive. The steady encroachment of the demand upon the meat supply of the country has no doubt aided successful combination in the industry. Perhaps the employment of other means of storing meat and the increasing tendency on the part of both consumers and stock growers to organize for the purpose of better marketing and distribution will help to bring competition more generally

[64] The Chicago Daily Tribune, Dec. 17, 1916, p. 1.

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into the meat industry. But as long as the bulk of the business remains under the control of three large companies whose extensive plants, selling agencies, and stockyards are strategically located throughout the country and whose stocks are largely held by a few cooperating individuals living in the same place, it will be difficult to break up a harmony of action that has been successful and highly profitable for many years.

NOTE. Since the above was written a report of the Federal Trade Commission on the packing industry has been published, which reaffirms in 1918 nearly all the previous charges against the packers.[65] The Commission charges the packers with being in a definite and positive conspiracy for the purpose of regulating the purchase of live stock and controlling the price of meat, and alleges that the "big five" companies (formerly the "Bix Six" before the dissolution of the National), the Armour, Swift, Morris, Wilson, and Cudahy, have a monopoly not only in the meat industry, but also in eggs, cheese, and vegetable-oil products and are rapidly extending it to cover fish and other foodstuffs. Not only do they control the meat industry in the United States, but they also control more than half of the export meat production of Argentina, Brazil, and Uruguay, and have large investments in other surplus meat-producing countries, including Australia. Although the five companies handled from 60 to 80 percent in the principal branches of the industry, the Commission claimed that their monopolistic position rested primarily upon the ownership, separately or jointly, of stock yards, car lines, cold-storage plants, branch houses, and other essential facilities for the distribution of perishable food. It also pointed out that the control of the "big five" was held by a very small group of individuals and that, excluding the profits of the Swift company on its South American business, the profits of the Armour, Swift, Morris, Wilson, and Cudahy companies for 1917 were 19.8, 33.4, 22.6, 29.6, and 23.2 percent respectively.

[65] Annals of the American Academy of Political and Social Sciences, V. 92, pp. 170 et seq.

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To make an end of the monopoly, the Commission recommended that the Government should acquire through the Railroad Administration all rolling stock used for the transportation of meat animals; the principal stock yards of country to be treated as freight depots and to be operated under such conditions as to insure competitive markets; all privately owned refrigerator-cars, and all necessary equipment for their proper operation; such branch houses, cold-storage plants, and warehouses as are necessary to provide facilities for the competitive marketing and storage of food products in the principal centers of distribution and consumption.

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CHAPTER III

THE DISSOLUTION OF THE STANDARD OIL COMPANY

THE suit brought by the United States against the Standard Oil Company of New Jersey was decided by the Supreme Court on May 15, 1911.[1] This decision, in which the whole trust policy of the court was reviewed, attracted much attention and discussion, since it ordered the dissolution of the oldest, the best known, and financially, the most powerful of our trusts.

The petroleum industry is one of constantly increasing importance throughout the world. The world's output in 1905 was about 215,000,000 barrels—45 percent more than in 1900. The United States more than doubled its production from 1900 to 1905. The total output of crude oil in this country in 1905 was 134,717,580 barrels of 42 gallons each, or more than 60 percent of the world's total production. Of this amount more than 99 percent came from the six leading oil fields known as the Appalachian, Lima-Indiana, Illinois, Mid-Continent, Gulf (Texas), and California fields. The crude oil from the Gulf and California fields contributed little to the supply of illuminating oil and other high grade products. In this same year 66,982,862 barrels of crude oil were used for refining purposes, yielding products valued at $175,005,320.[2] Of these products, illuminating oils made up 52.2 percent of the value, lubricating oils 14.2 percent, naphtha and gasoline 12.2 percent, paraffin wax 5.7 percent, fuel and residuum 7.1 percent, and all other products 8.6 percent.[3] During the decade following 1905,

[1] 221 U. S. 1.

[2] Report of the Commissioner of Corporations on the Petroleum Industry, part I, p. 260.

[3] Report on Petroleum Industry, Part I, p. 261.

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the production of petroleum in the country was again more than doubled and the value of its products more than kept pace.

Four periods may be marked out in the history of the Standard Oil interests.[4] During the first period, ending in 1882, almost complete mastery of the oil industry was secured. A concentration of oil interests which formed the basis of the Standard Oil system began with a partnership organized at Cleveland, Ohio, in 1867, under the name of Rockefeller, Andrews and Flagler. In 1870 this partnership was converted into corporate form by organizing the Standard Oil Company of Ohio with a capital stock of $1,000,000. Although this company was from the start the most important individual refining concern, it had only about 10 percent of the total refining capacity, the remaining 90 percent being divided among about 250 refineries.[5] It had no refineries outside of Cleveland and was not interested in the production of crude oil. A policy of expansion was rapidly carried out by the company and by 1879 combining oil interests, working through the Standard Oil Company of Ohio, obtained more than 90 percent of the refining business.[6] The control was secured through rebates and discriminating rates obtained from railroads, monopolization of the pipe lines extending from the oil fields to the refineries, local price cutting, absorption of competing refineries, and restraining contracts with competitors.[7] The Standard Oil was unexcelled in the use of unfair methods of competition by means of which it built up and maintained its monopoly. In a brief history only a few typical examples can be given to show how far the Standard's position is attributable to unfair methods.

The most important factor in establishing the Standard's monopoly was the railroad rebate. Favored rates and rebates were a vital factor because the crude oil being a relatively heavy, bulky, and cheap commodity, the transporta-

[4] Report of the Commissioner of Corporations on the Petroleum Industry, Part I; Part II; Report of the Commissioner on the Transportation of Petroleum; 221 U. S. 30-45; Brief of Facts and Argument for Petitioner in suit against the Standard Oil Company. See Biblio.

[5] Report on Petroleum Industry, Part I, p. 48.

[6] Ibid., pp. 49, 54.

[7] Ibid., pp. 49-66; 221 U. S. 32, 33.

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tion charge made up a large part of the price of the oil delivered at the refineries. The company continuously received favored rates. The first and one of the most striking illustrations of rebates is furnished in the case of the South Improvement Company.[8] This corporation was organized by the Standard interests in 1872. It aimed to secure control of the business of shipping oil, and for this purpose it entered into agreements with the Pennsylvania, the Erie and the New York Central and Hudson River railroad companies, under which a division of the Standard's traffic was to be made among the three roads. At this time competition among the railroads, as well as the refiners, was keen. The Standard, being the largest refiner and located at Cleveland where strong railroads competed for the traffic, was able to secure favored rates into the city. The agreements named the gross charges for transporting oil from the oil fields to refining centers and to the seaboard, and expressly provided for rebates from the gross rates on oil transported and controlled by the South Improvement Company. The gross rates, which the independents paid were sharply advanced. They were also much higher from the chief shipping points in the oil regions used by the independents than from the points used by the Standard.[9] The agreements provided for rebates to the Standard ranging in the case of crude oil from about 40 to 50 percent and on refined oils from about 25 to 45 percent of the gross rates. The higher rebates favored those points used by the Standard. A far more striking and effective provision of the agreements was that similar rebates should be paid to the South Improvement Company on all oil transported for other parties.[10] No competitor could long hold out against such odds. For example, the gross rate from any common point to Cleveland was eighty cents a barrel. The Standard secured a forty cent rebate on all oil controlled by it and in addition a forty cent cash rebate on all oil shipped by the independents. The agreements also provided that the South Improvement Company should be furnished daily with duplicate copies of the man-

[8] Report on Petroleum Industry, Part I, p. 55 ff.
[9] Ibid., pp. 55-6.
[10] Ibid., p. 55.

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ifest and way bills of all oil shipments, which should show the name of the consignor, place of shipment, exact kind and quantity of product shipped, name of consignee, and the destination of shipments. In this way were provided complete facilities for espionage upon the shipments of competitors.

The details of the arrangements with the railroads were effectively concealed for a time but the facts soon became known to the independent shippers and provoked most intense antagonism. In March, 1872, less than three months after the contracts were entered into, the railroads agreed to abandon them, to reduce rates, and to refrain in the future from all discriminations in charges upon oil. But during these few months, as a result of impossible competition and fear, twenty-one of the twenty-six refineries at Cleveland sold out to the Standard. These acquisitions gave the Standard 20 percent of the total output. This success was soon followed by an extensive campaign for control of refineries in other fields.

The Standard interests also entered into several alliances with other refiners. The first of these was the Petroleum Refiners' Association organized in 1872, which is reported to have embraced four-fifths of the refining interests of the country. Mr. Rockefeller was president of the association. This organization lasted less than a year. In 1874 the Central Association of Refiners was organized with Mr. Rockefeller as president. This association embraced a large percentage of the refining capacity of the country. The principal feature of the association agreement was that the refiners entering it were to conduct their manufacturing operations separately, but that the Standard was to have authority to make all purchases of crude oil and sales of refined oil, to decide how much oil each refiner should manufacture, and to negotiate all freight and pipe line expenses.[11] The influence secured by the Standard over other refiners was further increased because the Standard, in making all rates, secured a ten percent rebate from the railroads.[12]

[11] Report on Petroleum Industry, Part I, pp. 49-50.
[12] Ibid.

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In the same year many important refineries were acquired by the Standard and many independents were driven into bankruptcy.[13] In the following year the Standard Oil increased its capital stock to $3,500,000. Continuous acquisitions of property in the oil regions followed. The Standard was also active on the Atlantic seaboard where it acquired the terminal facilities for unloading, storing and handling the oil of the most important railroads.

It has been pointed out above how the Standard continued to secure preferential rates and rebates which had been the object of the South Improvement Company. In 1879 the Standard was receiving a rebate on its crude oil from western Pennsylvania fields amounting to no less than 51½ cents on a tariff rate of $1.40 per barrel.[14] At the same time it was obtaining a net rate of 80 cents per barrel on refined oil to the seaboard from Cleveland and western Pennsylvania points, while its competitors in western Pennsylvania, nearer the seaboard, were paying $1.44½.[15] When these rebates became known in 1879, suits were brought against the Pennsylvania Railroad and the United Pipe Lines. Indictments were also obtained against a number of the most prominent Standard Oil men. This litigation was abandoned, however, in 1880, as a result of an agreement on the part of both the railroads and the Standard interests to discontinue these abuses.[16] This second pledge was not kept and the Standard continued to obtain secret rates and other discriminating concessions.

Next to railroad discriminations, the most important factor in building up the Standard's supremacy in the oil industry was the monopolization of the pipe lines, first, those running from the oil fields to the refineries, and later those built to the seaboard. The superior efficiency and safety of pipe-line transportation, as compared with that by rail, was early recognized. By the early seventies nearly all oil producing districts in the Appalachian field were connected by pipe lines with nearby refineries or with railroads

[13] Report on Petroleum Industry, Part I, pp. 49-50.
[14] Ibid., pp. 63-4.
[15] Ibid., pp. 63-4.
[16] Ibid., p. 65.

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which completed the haul to refineries at the seaboard or other refining centers. There were five pipe-line systems in these oil regions. The Standard proceeded to secure a monopoly by employing the same methods used in securing the refining business. Throughout the Standard had the aid of the railroad rebates to subdue independent pipe lines. The first system acquired was the United Pipe Lines in 1874. The acquisition of many other pipe lines soon followed. In 1877 the Empire Transportation Company, the strongest pipe line rival of the Standard, was acquired after a bitter fight.[17] This company was affiliated with the Pennsylvania Railroad and in the bitter fight that ensued the Standard had the assistance of other railroads entering the oil regions. For a time the Standard withdrew all its oil business from the Pennsylvania road, but after a few months the Pennsylvania terminated the struggle by a complete surrender of the Empire Transportation Company with all its pipe lines, refineries, and tank cars to the Standard Oil Company.[18] This, together with other acquisitions in 1877, gave the Standard a dominant control of the pipe line facilities in the oil regions.[19] It soon had 80 percent of the pipe lines then in existence.[20] No one could reach the railroads without the Standard's consent.

The Standard, aided by both railroad advantages and control of the pipe lines, rapidly increased its control of the oil refining business. The Standard absorbed practically all the independent refineries in the Oil Creek district of northwestern Pennsylvania and twenty of the remaining independent refineries in the Pittsburg district between 1875 and 1877.[21] Practically the entire group of independent refineries at Baltimore were absorbed in 1877.[22] Not a year passed without the acquisition of concerns competing in the production, transportation, refining or marketing of petroleum and its products. Among these were the largest oil

[17] Report on Petroleum Industry, Part I, p. 53.
[18] Ibid.
[19] Ibid.
[20] Ibid., p. 52.
[21] Ibid., p. 50.
[22] Ibid.

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concerns in the country. A great many of the plants were dismantled as soon as acquired.

Some of the larger acquisitions were made by the exchange of stock in the Standard Oil of Ohio. Others were acquired through the purchase of stock by cash taken from earnings. In only a few instances were the acquired properties conveyed to the Standard Oil Company. The stocks of the acquired concerns were put in the names of the various stockholders of the Standard Oil of Ohio, but were held for the benefit of all the stockholders. The previous owners of the larger concerns which were acquired by the exchange of stock became stockholders in the Standard. They usually remained with their concern in the capacity of manager. Often there was no change and the plant was continued as a bogus independent. In this way the number of stockholders in the Standard Oil of Ohio increased from 6 in 1870 to 37 in 1879. This arrangement of the acquired interests allowed the greatest measure of secrecy and avoided showing a direct acquisition by the Standard Oil Company.

The Standard interests having obtained a monopoly control of the refining and pipe line business, proceeded to perfect the organization of the companies brought under their control. In 1879 a trust agreement was entered into by the terms of which the stocks held by the Standard interests were turned over to three trustees, to hold, control, and manage the same for the Standard Oil Company of Ohio.[23] The trustees agreed "as soon as they could conveniently do so" to divide and distribute the stocks among the stockholders according to their respective proportions and interests.[24]

The Standard promptly entered into arrangements for a division of its heavy traffic among the various railroads entering the oil fields. The attempt to harmonize the situation was soon disturbed by an unexpected move on the part of some independent oil interests. This was the construction of a through pipe line from the oil fields of northwestern Pennsylvania to the seaboard, 109 miles distant, by the Tide Water Pipe Company. The independent refiners

[23] Brief of Facts and Argument for Petitioner, V. I, p. 21.
[24] Ibid.

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were ready to assist the Tide Water enterprise because it would free them from the railroads. The pipe line project was at first regarded by both the Standard and the railroads as being utterly impracticable, but its successful operation in 1879 soon proved that a new era had come when oil transportation would be largely freed from the railroads. The day of the railroads as the chief transporters of oil, upon which the Standard's monopoly was dependent, was doomed. The Standard quickly attempted to gain control of the pipe line. Again the Standard was assisted by the railroads whose interests were also involved. The railroad rate from western Pennsylvania to New York Harbor dropped almost in a single day from $1.15 to 30 cents a barrel, while the Standard got still lower secret rates.[25] The Standard cut its local pipe line charges. It then proceeded to buy up the feeders upon which the pipe line was dependent, thus reducing the volume of business and increasing its cost per unit. Attempts were also made to ruin the credit of the Tide Water Company. In 1881 the Standard interests acquired all except one of the independent refineries at New York, which furnished the market for the Tide Water Company's product.[26] The Tide Water interests immediately commenced the construction of their own refineries at the seaboard.

In the meantime the Standard planned a pipe line of its own, but on a larger scale. In 1881 it organized the National Transit Company with a capital of $5,000,000 for the construction of a trunk line to the seaboard which should connect with local pipe line systems. About the same time it succeeded, by paying large premiums, in acquiring a minority interest in the Tide Water Company's stock. This move, together with the continued hostility of the railroads, led to a virtual surrender on the part of the Tide Water interests in 1883.[27] The contracts of agreement provided that the total pipe line business of the two groups should be divided between the Tide Water and National Transit companies in the proportions of 11.5 percent and 88.5 percent,

[25] Report on Petroleum Industry, Part I, p. 23.
[26] Ibid., p. 50.
[27] Ibid., p. 54.

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respectively.[28] The total business of the refineries of these two groups was divided in the same proportions. The Tide Water Company has since remained a part of the Standard Oil system. For a time these two pipe line companies were alone in the trunk line business. The experience of the Tide Water enterprise discouraged the construction of independent lines for several years.

Thus, during the first period, the Standard obtained control of from 90 to 95 percent of the oil refining business, and nearly as large a control of the pipe lines, first of the local pipe lines and later of the trunk lines. Its position was established primarily through the aid of railroad discrimination, and secondarily through pipe line control. The rebate ranging from a cent to a cent and one-half per gallon was sufficient in itself to give a monopoly in the territory affected. The railroads, in conspiring with the Standard, gave the latter its monopoly. The Standard covered its agreements with the greatest secrecy and repeatedly denied the true relations which existed between it and the other oil interests which had been acquired. Throughout the period unfair methods of competition were used and the efforts of the independent refiners and crude oil producers to secure legislative and judicial relief were defeated.

The second period of the oil combination, beginning with the Standard Oil Trust agreement of 1882 and ending in 1899, is known as the "trust period." The agreement of 1879 gave place to a new trust agreement in January 1882.[29] The latter is a typical example of the trustee device. By the terms of this agreement the stocks with all their voting rights and the control over the business and affairs of forty corporations representing the Standard interests were turned over to a board of nine trustees to be held for all the parties in interest jointly during the lives of the survivors and survivor of the trustees named in the agreement and for twenty-one years thereafter. In exchange for the 35,000 shares of stock held by forty-one stockholders, a value of $55,710,698, the trustees issued 700,000 certificates, the ratio of exchange

[28] Report on Petroleum Industry, Part I, p. 54.
[29] Ibid., pp. 361-69.

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being 1 to 20.[30] Of the 700,000 trust certificates, seven men received 451,100. John D. Rockefeller received 191,700, or 27.4 percent of the total. These certificates represented the holder's equity in the total property of the combination and served as a basis for declaring dividends.

The railroad discriminations during the first ten years of the trust period, if perhaps less audacious than before, were still flagrant.[31] In 1884, the Standard interests entered into an agreement with the Pennsylvania Railroad whereby the latter was to be credited with the transportation of 26 percent of the entire shipment of petroleum to the seaboard, whether by rail or by pipe line.[32] In return it was agreed that all joint rates from any delivery point of the Standard's feeding pipe lines to any refining or terminal point should be fixed by the railroad, subject to the advice and concurrence of the Standard. The rail rate which for several years had been 33 cents per barrel from the Pennsylvania oil fields to the seaboard was now raised and maintained at 45 cents per barrel for many years. Since the cost of pipe line transportation was so much less than by rail the agreement provided that, wherever possible, the railroad could turn the oil over to the Standard's pipe line and the rail rate would be divided. The pipe line maintained the same high rate as the railroad. The result was that the independent refiners were practically prohibited from establishing refining plants at the seaboard where they would be near the large markets offered by the seaboard cities.

Other instances of railroad discriminations during the trust period were agreements with transcontinental railroads, which provided temporary and secret reduction of rates to the Pacific coast to allow the Standard to accumulate large stocks of oil.[33] Then at the suggestion of the Standard the rates would suddenly increase. Another form of discrimination which excited much hostility among the independent shippers was the giving of lower rates on oil in tank cars than in barrels, a favoritism to the largest shippers

[30] Brief of Facts and Argument for Petitioner, V. I, p. 62.
[31] Report on Petroleum Industry, Part I, pp. 73-76.
[32] Ibid., p. 74.
[33] Ibid., pp. 74-5.

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using tank cars. In the territory south of the Ohio river the rates charged to barrel shippers in carloads ranged from 50 to 200 percent above the rates charged for tank cars. Though the concessions were less, similar discriminations were practiced in other sections of the country.

A belief became quite prevalent in the oil regions that combined opposition to the Standard was useless. However, two conspicuous instances of individual opposition were shown by the firm of Scofield, Shurmer and Teagle, and by George Rice.[34] The former had agreed with the Standard in 1876 to limit its annual output of refined oil to 85,000 barrels in return for equal transportation rates received by the Standard. This arrangement was exceedingly profitable because of the wide margins of profit secured. The firm began to exceed slightly its 85,000 barrels, offering the Standard one-half of the excess profit. The Standard refused the offer and in 1880 shut off the firm's supply of crude oil which now came through the Standard's pipe line. The firm accepted the challenge and sought to carry on a business independently of the Standard and its rebates. The Standard was bold enough to bring an injunction suit to force the firm to fulfill its agreement—an agreement in restraint of trade. The case was so evident that no one could expect any court to uphold such an agreement. For many years the firm found their lot hard, having to pay rates as much as double those of the Standard. After a number of years the firm brought suit against the railroad for giving rebates. The case finally reached the Supreme Court of Ohio in 1892 where the firm won in securing equal rail rates, but the discriminations for more than ten years had almost ruined their business.

The opposition of George Rice also grew out of railroad discrimination and was important in showing that the Standard still received rebates on oil shipped by others. Mr. Rice built a refinery at Marietta, Ohio, in 1873. In 1878 his business was practically stopped by a local advance in rates amounting to 100 percent. Not being able to secure more

[34] Tarbell, The History of the Standard Oil Company, V. II, pp. 63-87.

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reasonable rates or rebates Mr. Rice built a pipe line of his own in 1885. In the same year he brought suit against the receiver of the Cincinnati and Marietta Railroad. The suit revealed an agreement between the Standard and the railroad whereby the Standard got a rate of ten cents per barrel, and for others the rate was fixed at thirty-five cents. This alone was a very large discrimination but the railroad also turned over to the Standard twenty-five cents for each barrel shipped by the independents. Within twelve days after the court had ordered that the records should be produced the Standard paid to Mr. Rice all that it had received from the railroad on his shipments. Refunds were likewise made to two other refiners in the same city.

The combination continued the policy of absorbing competitors. Between 1882 and 1892 stocks were acquired in about 78 corporations, not including the 40 that originally entered the trust.[35] Some of these corporations were created by the trustees. Such were the Standard Oil Companies of several states. Others were competing corporations. Often plants were dismantled as soon as acquired. In 1892 the total number of corporations held by the trustees was 84. Some of the acquisitions were made by the issuance of new trust certificates, others in cash out of the earnings controlled by the trustees. During the ten years $12,225,400 in trust certificates were issued for this purpose. These additional certificates, together with a dividend in trust certificates of $15,034,600 in 1887, brought the total issue up to $97,250,000.

The independents met almost insurmountable opposition from the Standard in their attempts to construct a pipe line to the seaboard during this period. They had sought legislative measures to restrict the excessive pipe-line rates and to require the delivery of oil to all persons desiring oil at the different shipping points, but all bills to this effect were opposed by the Standard and failed of passage. In 1891 they determined to build a pipe line because the prices of crude oil at the wells were very low compared with the prices of refined oil at the seaboard. The Producers' Oil

[35] Brief of Facts and Argument for Petitioner, V. I, pp. 62-3.

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Company was organized and a pipe line was laid from southwestern Pennsylvania to Corapolis, near Pittsburg, from whence the company expected to ship by rail to the seaboard for the export market. But before it was completed in 1892 the Standard had so lowered the price of crude oil at the seaboard that not a barrel was shipped by the new company. As a result the pipe line was extended, after overcoming the opposition of several railroads whose tracks were crossed, to Oil City. The independent refiners at this point, who were dependent upon the Standard, organized into the Producers' and Refiners' Oil Company, and aided in the construction of this extended line which has since furnished them their crude oil. The latter company was controlled through stock ownership by the Producers' Oil Company. Later the Standard interests acquired a majority of the stock of the Producers' Oil Company, paying very high prices for some of the shares, but were unable to vote them because, according to the laws of Pennsylvania, a transfer of interest in a limited partnership could be prevented by a majority vote of the remaining members and stocks. The Standard made a test of this law in the courts and the law was upheld.

In the same year, 1891, and growing out of the same conditions, other independents organized the United States Pipe Line Company for the purpose of constructing a pipe line to the seaboard. Every possible obstruction was placed in its way, both by the Standard and by the railroads, but the evidence shows that the latter were acting in the interest of the Standard. They never opposed the Standard when it wanted to cross their lines. The pipe line company expected to extend its line to New York Harbor but the first section was to be built to Hancock, New York, where shipments for the seaboard would be turned over to the railroad. This section of the line was completed except across the right of way of the Erie Railroad which maintained a force of men for three months to prevent making a connection. The company then took up 70 miles of its pipes and built the line to Wilkes-Barre, contracting with the Central Railroad to deliver its oil by rail at the seaboard. In building this section

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opposition from four railroads caused much delay and in some cases demanded court action.

Opposition of even a more serious nature was encountered by independent refiners and pipe line companies through the manipulation of the prices of oil by the Standard. The price of crude oil was raised at the wells and the price of refined oils much reduced at the seaboard. These conditions, which prevailed from 1893-5, were very depressing to the independents, and some of the largest independent refineries were forced out of business. For a time the United States Pipe Line carried oil for nothing in the interests of the producers and independent refiners. The Standard also acquired one-third of the stock of the United States Pipe Line Company. The stockholders of the latter refused to let the Standard interests attend their meetings or vote the stocks. In the court action that resulted the pipe company lost their contention in the lower court and their appeal to the Supreme Court of the state was quashed on technical grounds. The pipe line company then put its remaining stocks in a voting trust to prevent the Standard from getting them.

In 1895 the United States Pipe Line undertook to complete its line to New York Harbor. The first opposition came from the Pennsylvania Railroad which refused the right to cross its tracks. The pipe line company managed to purchase an acre of ground along a river bank to which the railroad did not have title, and laid its pipe further to the tracks of the Delaware, Lackawanna and Western Railroad. Here the employees of the railroad and pipe line came together in a hand-to-hand fight. Both parties agreed to take the issue to the courts and after six months a decision of the lower court allowed the pipe line to cross. Pending an appeal by the Standard interests the line was laid 50 miles further to another railroad shipping point. In attempting to extend the line to New York Harbor it was found that the Standard interests had taken out exclusive rights of way upon long strips of land running up and down across the country. Next, the Supreme Court of New Jersey reversed the decision of the lower court and the pipe line company, finding

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from its experience that it was impossible to cross a state having no law giving the right of eminent domain to pipe lines, took up all its pipe lines in New Jersey and built its line south from Wilkes-Barre to a seaboard point near Philadelphia. This section was completed in 1901, nine years after the line had been commenced.

The Pure Oil Company was organized in 1895 for the support of the independents who were tempted to sell out to the Standard because of the depressed oil prices during the years 1893-5.[36] This corporation was a selling agency for the independents, largely in the export market. Five years later the authorized stock issue of the company was raised from $1,000,000 to $10,000,000 and a majority of the stock of the Producers' Oil Company, the Producers' and Refiners' Company and the United States Pipe Line Company, was turned over to it. The stocks in all the companies were put in a voting trust so that they could not be secured by the Standard. The Pure Oil Company has since remained independent but owing to its small capacity compared with that of the Standard it has never restored competition in the oil business.

In 1891 still another important pipe line system was begun by independent interests, a group of Pittsburg bankers.[37] The gathering system, which was very large, was known as the Mellon Line, while the trunk line, completed by the same interests in 1893 and extending 271 miles to the seaboard near Philadelphia, was known as the Crescent Pipe Line. In order legally to purchase this line the Standard interests, after several attempts, succeeded in securing the repeal of a Pennsylvania law prohibiting the consolidation of pipe lines. This occurred in 1895, during the period of depression in the oil prices, and immediately after the law was repealed this entire pipe line system, including its terminal refineries, was purchased by the Standard. Several other important competing pipe lines, not extending to the seaboard, and running from two to three million barrels an-

[36] Report on Petroleum Industry, Part I, pp. 126-134.

[37] Ibid., Part I, p. 83; Brief of Facts and Argument for Petitioner, V. I, pp. 221-2.

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nually, were also acquired by the Standard during the trust period.

In 1890 the State of Ohio brought suit against the Standard Oil Company of Ohio, charging that the company had violated the laws of the state by entering into the trust agreement of 1882, and asking that its charter be forfeited.[38] The case was thoroughly argued for a period of about two years. In March, 1892, the Supreme Court of Ohio rendered a decision declaring the trust agreement to be illegal, but instead of revoking the company's charter the court only ordered the company to cease its connection with the trust. The company promptly announced that the entire trust would be terminated. The trustees assumed the title of "liquidating trustees" and went through with voluntary dissolution proceedings.

At this time the number of corporations controlled by the trustees was 84 and the issue of trust certificates $97,250,000. The trustees first sold property held by them to the amount of $1,579,400 and distributed the proceeds. Then the trustees transferred from themselves the stocks of 64 of the 84 corporations held by them to certain of the 20 remaining corporations. The shares of these 20 companies selected to receive the stocks were virtually owned by the nine trustees, or the members of their immediate families or associates. These companies were then, and remained thereafter, the principal companies comprising the Standard Oil combination. The trustees next proceeded to make a pro rata distribution of the stocks of these 20 companies. The stock of the 20 companies was divided into 972,500 parts, corresponding to the number of trust certificates. Each certificate holder desiring to cancel a certificate received $\frac{1}{972500}$ part of the stock of all the companies held by the trustees. The nine liquidating trustees, the members of their immediate families and associates, owning a large majority of the certificates, were practically the only ones who liquidated their certificates, and obtained stock in the sub-companies. Since the trustees continued to pay the same dividends upon the certificates as they did upon the

[38] Report of Petroleum Industry, Part I, pp. 76 et seq.

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stocks of the sub-companies and refused to pay dividends on fractional shares, the small holders of certificates did not liquidate their holdings. As a result the nine trustees with a few others, controlling a majority of the stocks of each of the companies, held the only stocks voted at the annual meetings. The large body of trust certificate holders who did not turn in their certificates had no vote in the management of these companies. This condition remained until about 1898-9.

The concentration of the stock within the 20 companies and the manner in which the distribution was made plainly showed an attempt to evade the decision of the court while appearing to comply with it. The trust remained with substantially the same organization as before. The same nine trustees had a control as complete and direct as before and the greatest secrecy surrounded all that was done. The leaders testified in court that the trust was dissolved in accordance with the decision of the court.[39]

We have already shown how the Standard interests, following the dissolution, worked as a unit in preventing the construction of independent pipe lines, manipulating oil prices, and acquiring a monopoly of the trunk pipe line systems. The belief became general that the dissolution of the trust had not been sincerely attempted and was being avoided by means of a subterfuge. The trustees refused to liquidate a trust certificate on the ground that it would result in breaking up the certificate into a number of almost infinitesimal fractions of corporate shares.[40] As an incident growing out of the suit that followed, the Attorney General of Ohio, by order of the Supreme Court of the State, instituted contempt proceedings against the Standard Oil of Ohio in 1897, charging that the latter had not withdrawn from the trust as required by the decree. After a large amount of testimony was secured the Standard, fearing the results of this suit, changed the form of its organization in 1899, and the suit was dismissed in the following year.

The third period of the Standard Oil history began with

[39] Brief of Facts and Argument for Petitioner, V. I, p. 67.
[40] Report on Petroleum Industry, Part I, p. 81.

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the organization of the holding company in 1899. The Standard Oil Company of New Jersey was chosen for this purpose and its charter was amended. The Standard interests transferred their various properties and stocks to this New Jersey company, the parent holding company. The outstanding stock of the latter was converted into common stock and the issue increased to $97,250,000, an amount equal to the trust certificate issue of 1892. Each trust certificate was exchanged for a share of stock in the Standard Oil of New Jersey. A share of stock represented a fractional ownership in all the interests and properties of the combination. The original stocks of all the companies were held in the treasury of the company. The reorganization made no essential change in the position of the Standard interests in the oil industry because they were kept intact. The few largest shareholders still retained the same proportion of dominant control as in 1882. The change was in form only. It was effected by an exchange of paper, piece for piece, each representing the same equity, but it gave the combination legal standing.

Although this period of the Standard's history extends to the dissolution of the company in 1911, a general view of the Standard's position with particular reference to the years 1904-6 will be given as the suit to dissolve the company was begun about this time. Although the Standard never acquired a monopoly in the production of crude oil, yet, because of its control of the refineries, pipe-lines, and marketing facilities, it has always been able to fix the price for the crude oil that it buys.[41] The production of crude oil is a risky enterprise in most regions and the Standard has tended to leave others do the risky things in the oil business. It did not become an important producer of crude oil until the latter part of the eighties. Its greatest production was in the Appalachian, Lima-Indiana, and Illinois fields, the fields where crude oils yielded the largest proportion of illuminating and lubricating oils. These fields were also the most dependent on distant pipe-line transportation. Of the total production in the Appalachian and Lima fields

[41] Report on Petroleum Industry, Part I, p. 113.

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the Standard produced 11,019,205 barrels, or 24.44 percent, in 1890, and 18,469,049 barrels, or 35.58 percent, in 1898.[42] During 1906-7 extensive acreage and production was secured in the Illinois fields. At this time the Standard's production in the other fields was relatively unimportant.

In all the important oil fields except Texas and California, the Standard bought from 80-99 percent of the crude oil and had almost unlimited power to fix the price of crude oil, as well as the price of finished products.[43] The extensive investigations of the Bureau of Corporations grew out of complaints to Congress on the part of the crude oil producers of Kansas who were suffering from a sudden and extraordinary reduction in the crude oil prices offered by the Standard, which, because of its pipe line control, was practically the sole purchaser of crude oil in this field. The Standard would not allow crude oil through its pipe lines for any except its own refineries. The Governor urged the building of a state refinery, claiming there was then no competition. The construction of one was begun but it was declared unconstitutional. The Kansas refiners then proceeded to build a pipe line to the Gulf and the state attempted to abolish discrimination.

The Standard, however, continued to receive extensive railroad preferences and discriminations. In 1903 the Elkins amendment, dealing wholly with railroad discrimination, was added to the Act of 1887. It declared any departure from the published rates a misdemeanor, and this was made to apply to the shipper as well as to the railroad. Rebating still continued under more ingenious forms. The investigations by the Bureau of Corporations in 1905 and 1906 showed that the Standard continued to receive from the railroads extensive and large discriminations in rates of transportation.[44] Because of its enormous shipments, and because of its influence in financial circles and in the directorates of many of the leading railroad systems of the country,

[42] Report on Petroleum Industry, Part I, p. 114.

[43] Walker, Francis, The Oil Trust and the Government, Pol. Sci. Quart., V. 23, p. 32.

[44] Report of the Bureau of Corporations on the Transportation of Petroleum, 1906.

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the Standard was able to demand material concessions from most railroads. The railroads of the country quite uniformly had a system of rates whereby, with few exceptions, the independent shipping points were discriminated against in favor of the Standard shipping points. In many instances the discriminations were large enough to give a reasonable profit upon the oil, often ranging as high as one and one-half cents per gallon. These discriminations were secured in connivance with the railroads through direct rebates, secret rates, discrimination in the open and published rates, excessive prices allowed for equipment, such as tank cars, terminal rentals, and through the refusal of the railroads to grant joint through rates on oil for the independents when such a refusal favored the Standard. Every possible effort was made to evade the law by means of blind billing, false billing, billing and rating from insignificant points, arbitrary weights on oil, and secret arrangements of temporary rates.

The more important secret rates, which covered a large portion of the country, were sufficient in themselves to give control and allow monopoly prices.[45] Other important discriminations occurred in the open and published rates. The extent of the discriminations plainly showed an agreement between the Standard and the railroads to procure for the former a monopoly of the oil trade. To the same end was the equally unjust and unlawful refusal of the railroads to give the independents joint through rates into several important sections of the country.

Following the Bureau's investigations, the Standard hastened to abolish discriminations, withdrawing the secret rates, adjusting the open rates, and resuming the practice of pro-rating on oil. As a result of the investigations the Government brought criminal proceedings against the Standard interests, charging them with unlawfully accepting discriminations in transportation. Nineteen indictments, and 8,700 counts were returned.[46] One of these indictments, the one against the Standard Oil of Indiana, resulted in a fine

[45] Walker, Pol. Sci. Quart., V. 23, p. 23.
[46] Ibid., pp. 25-31.

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of $29,240,000 for accepting secret rebates from the railroads. The amount of the fine imposed by the lower court caused a sensation, but it "was a bagatelle compared with the sums that the Standard Oil Company had extorted from the people very largely by means of such criminal methods."[47] An appeal of the case by the defendant resulted in the exculpation of the Standard Oil Company through the aid of eminent counsel and the technicalities of the law. As a result only a small fine was paid.

The Standard's monopoly had become more dependent upon its control of the pipe lines of the country. Except in the California and Texas fields, nearly all the transportation of crude oil was by pipe lines in 1906. The Standard's pipe line mileage of various sizes had increased from 3,531 miles in 1882 to 54,615 miles in 1906. Its position in the refining and marketing of oil was largely due to its almost complete control of pipe lines in the Appalachian, Lima-Indiana, and Mid-Continent fields, from which most of the oils suitable for refining are produced. In the Texas and California fields much of the transportation was by rail and water. Although the Standard did not have a pipe line control in these fields, its position was not materially weakened, since the crude oil production of these fields contributes little to the supply of illuminating oil and other high-grade oil products. The Standard is, however, increasing its pipe line control in these fields. In 1904 the Standard carried through its pipe lines about one-third of the 29,649,434 barrels produced in the California field.[48] The independents had but one important trunk line, the only independent line to the seaboard. This was the pipe line of the Pure Oil Company, which tapped the Appalachian field, yet the Standard transported 88.8 percent of the oil from this field in 1904.[49] The proportion of the total pipe line business to the seaboard controlled by the Standard ranged from 97.5 percent in 1901 to 95.1 percent in 1906.

The pipe line control was used to prevent competition.

[47] Walker, Pol. Sci. Quart., V. 23, p. 30.
[48] Report on Petroleum Industry, Part I, p. 151.
[49] Ibid., p. 138.

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The opposition to construction of competing lines, acquisition of stock interests in competing lines, detachment of refineries and wells from independent pipe lines, and payment of premiums on crude oil in territory reached by competing lines have been mentioned. The payment of premiums on crude oil was very effective in defeating competition. The Bureau found a number of regions in 1904-5 where this unfair practice was carried on under the guise of bogus indedents.[50]

Although the laws of several states required pipe lines to act as common carriers, the Bureau's investigation in 1906 showed that the Standard pipe lines almost never transported oil for others.[51] In most parts of the Appalachian, Lima-Indiana, and Mid-Continent fields where there were no independent lines the Standard became the sole purchaser of the crude oil. An independent refiner could not buy his oil direct from the producer. In the Mid-Continent field the Standard did not pretend to act as a common carrier and demanded that all oil delivered to its pipe line become at once its property and it sometimes refused to take oil from producers who sold part of their oil to other concerns.[52] In some cases where the Standard showed a willingness to transport oil for others it refused to deliver the oil at points desired, but would deliver it at places where it was of no practical use to the refiner.[53] Becoming the sole purchaser of crude oil through its refusal to transport oil for others, the Standard at various times refused to sell oil to independent refiners.[54] The refusal to transport or to sell the crude oil was a very effective method of preventing competition. In some cases where the Standard did sell crude oil to other refiners it sold less than was desired and established other restrictive conditions. In some instances it transported oil for others when threatened by suits or by the construction of competing pipe lines.

In 1906 Congress passed a federal law, the Hepburn act,

[50] Report on Petroleum Industry, Part I, p. 155.
[51] Ibid., p. 156 et seq.
[52] Ibid., p. 159.
[53] Ibid., pp. 162-3.
[54] Ibid., pp. 163-6.

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which declared that pipe lines engaged in interstate commerce were common carriers and were subject to all the provisions of the interstate-commerce act requiring reasonable rates, prohibiting discriminations, requiring the filing of tariff rates and of reports with the Interstate Commerce Commission. The powers of this commission at this time were still inadequate for enforcing its orders over common carriers. Later its powers were greatly increased, but still no material adjustments occurred in the pipe line control, its use, and abuse, which formed the principal bulwark of the oil monopoly.

The Standard practically rendered the Hepburn act imperative over its lines and prevented the use of its pipe lines by outside shippers. Some of its pipe lines filed tariff rates at which they would transport oil between certain points, but the rates were so high that they were virtually prohibitory.[55] These rates were usually the same as the railroad rates between the same points. Since the cost of pipe-line transportation is very much less than by rail, rates should be correspondingly lower in order that all might share in the superior efficiency of pipe-line transportation.[56] The unreasonable rates applied not only to the trunk pipe lines but also to the Standard's gathering line in the oil regions.

Others of the Standard's pipe lines wholly failed to file tariffs and refused to transport oil for others.[57] The Standard maintained that the law only affected pipe lines which exercised the right of eminent domain and some of its most important lines therefore filed no tariffs. In states where eminent domain rights were exercised, the law was usually evaded by changing the legal ownership of that part of the pipe line within the boundaries of each state. Also the pipe lines which filed tariffs failed to name rates to some of the most important refining, marketing and consuming centers reached by them, including points like New York Harbor and Baltimore, accessible only by interstate transporta-

[55] Report on Petroleum Industry, Part I, pp. 182-7; 207 ff.
[56] Ibid., pp. 207-246.
[57] Ibid., pp. 183-7.

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tion.[58] The tariffs contained practically no rates between points within the same state. Most of the tariffs filed required the minimum amount of the shipment to be not less than 75,000 barrels, and in some cases 300,000 barrels, minimums so high as virtually to prevent the use of the pipe lines by the outside shippers who, with few exceptions, could not handle such large amounts.[59] Immediately after the legislation in 1906 the Standard made a complete change in the method of publishing statistics of their business. Prior to this year the various pipe lines in their daily, monthly and annual reports sharply distinguished between crude oil from the different fields. These reports were of great statistical value to producers, refiners, and others in determining their policy. They contained data for ascertaining the amount and grade of oil from each field, number of runs and shipments. After this year the pipe line reports did not distinguish between the different kinds of oil. The result was to impair greatly the value of pipe-line statistics for the information of the public.

The Bureau considered the practicability of pipe lines acting as common carriers.[60] Pipe line transportation is obviously different from transportation by rail or water. A pipe line could not be expected to transport oil in a direction contrary to that of the ordinary movement except in very large quantities. This difficulty hardly ever arises in practice. Again the capacity of a pipe line is strictly limited while the production of the wells is irregular and frequently of greater capacity than the pipe line. This raises questions of adjustment of claims of different shippers to uses of the lines and of what constitutes reasonable storage facilities on the part of a common carrier. When this difficulty arises it is usually of a temporary nature. These difficulties are analogous to those that have been met in regulating the railroads. They do not weaken the claim that pipe lines shall be made common carriers. Where the delivery of oil from the common stock is satisfactory to shippers and con-

[58] Report on Petroleum Industry, Part I, pp. 187-9.
[59] Ibid., pp. 189-191.
[60] Ibid., pp. 196-206.

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signees, separation of shipments is unnecessary and difficulties could easily be adjusted. In cases where it is practicable to keep the shipments of oil separate, the minimum amount of each shipment can be made much lower than the Standard's requirement. However, the conclusion of the Bureau, the practice of the Standard, and the testimony of the independents tend to establish the fact that in each of the important oil fields the difference in the quality of oils from different wells in the same pools, and sometimes from all in the same field, are comparatively slight, the oils being so nearly uniform that pipe lines could transport the oil as common carriers without keeping individual shipments separate.[61] If this were done pipe lines could accept shipments or make deliveries in comparatively small quantities, not exceeding a few hundred barrels.

The Standard's control over crude oil prices, which is measured chiefly by its proportion of pipe line business, does not directly measure its control over the finished products. Only 66,982,862 barrels, or about one-half of the amount of crude oil produced in 1904, was refined within the country. Of this amount the Standard refineries, though much less than half the number of independent refineries, consumed 84.2 percent. However, the Standard's proportion of refined products was 86.5 percent because it used a larger proportion of the crude oil yielding the largest amount of refined products.[62] Moreover, nearly one-third of the output of the independents was from refineries which were chiefly or wholly dependent on the Standard for their crude oil. Many independents were allowed only as much crude oil as the Standard saw fit to give them, and were sometimes required to sell their refined output to the Standard. Less than 10 percent of the national production came from wholly independent concerns.[63] The Standard controlled about the same percentage of the total output of naphtha and lubricating oils.[64] Lubricating oils constitute about 14.2 percent of the value of petroleum products. The

[61] Report on Petroleum Industry, Part I, pp. 204-6.
[62] Ibid., pp. 280, 289.
[63] Ibid., p. 282.
[64] Ibid.

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Standard's control in this branch is shown by the fact that it furnished from 95 to 97½ percent of the lubricating oil used on the steam railroads of the country. Its proportion of the low grade products, gas oil and fuel oil, which are largely produced from the Texas and California crude oils, was less.

The Standard also dominated the export trade. Of a total production of 27,135,094 barrels of illuminating oil in 1904, 15,227,163 barrels, or about 56 percent, were exported.[65] The Standard's percentage of the export business in refined oil ranged between 90.8 percent in 1900 and 86.3 percent in 1906.[66]

The Standard's control of marketing facilities greatly aided the practice of price discrimination in the sale of its products and it was one of the chief sources of maintaining its monopoly control. The control of the pipe lines and refining business, together with unlawful advantages in transportation, enabled the Standard to monopolize quite completely the sale of petroleum products, and thus strengthen its control of prices. Most refined oil is marketed by means of tank cars, tank stations, and tank wagons, which deliver the oil to the retailer in bulk without the use of barrels or other packages. Bulk distribution is usually cheaper, cleaner, safer and more convenient for the retailer.

The Standard made its selling control effective by establishing a universal and efficient system of marketing its products directly to the retailer and large consumers. It divided the country into ten large marketing districts and assigned an exclusive marketing company to each district. The marketing company purchases the oil at the refineries and ships it to the main and substations where it is unloaded into large tanks and distributed by tank wagons to the retail dealers and larger consumers in the near-by towns. By the establishment of this system the eliminated jobbers were usually forced to sell their wagons and storage equipment to the Standard. Were oil marketed through jobbers, competition would result in most towns of any considerable size. No

[65] Brief of Facts and Argument for Petitioner, V. I, p. 164.
[66] Ibid.

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other concern except the Standard has been able to do a sufficient amount of business to warrant the establishment of marketing facilities over a large area. The independents have relatively few tank wagons and in most towns their deliveries are made by barrels, which is an ineffective method of competition. The independents, whose selling areas are very limited, are not able to compete with the Standard on equal terms. The Standard has been able to prevent the development of bulk delivery by the independents through cutting prices sharply where the latter seek a foothold. The independents fear to go to the expense of entering a new field no matter how tempting the prices. They cannot meet the price cutting of the Standard which can sell below cost in contested regions and at the same time enjoy enormous profits on its business as a whole. As a result, there are large sections of the country where almost no independent oil is sold and the Standard sells the greater part of its products without any competition.[67] Reports secured by the Bureau during 1904 from 3,854 towns scattered throughout the country showed that the Standard made all the deliveries of oil in 85.4 percent, and part or all in 95.8 percent.[68] Of 5,397 dealers reporting, 88.2 percent made their purchases exclusively from the Standard.[69] There were 146 reports of purchases from Standard concerns which were represented as being independent in order to secure the trade of anti-trust purchasers. The Standard marketed from 84.8 percent to 90.1 percent of the illuminating oil in the country from 1900 to 1906.[70] These proportions were substantially the same for all of North America. Its proportion of sales varies in 1904 from 84 percent for the southern part of the North Atlantic States, to 99.1 percent for the Rocky Mountain States, and 99.8 percent in Mexico.

A study of the Standard's profits also indicates a monopoly and its abuse. The total investment put into the Standard Oil Company from its organization to 1911 has

[67] Report on Petroleum Industry, Part I, p. 330.
[68] Ibid., pp. 299-300.
[69] Ibid., p. 296.
[70] Brief of Facts and Argument for Petitioner, V. I, p. 162.

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been $69,024,480.[71] Whatever other property the Standard owns to-day has come from earnings over and above the dividends paid. The capitalization has remained approximately at $97,250,000 since 1890. The dividends paid from 1882 to 1906 amounted to $548,436,446, an amount equal to 32 percent per annum on the original investment.[72] In addition to these dividends there was at the close of 1906 a surplus of $261,061,811.[73] The total earnings from 1882 to 1906 amounted to $838,783,783. The significance of these earnings is better shown if we consider the later years when the monopoly was well established. During the ten year period ending in 1906 the declared dividends ranged from 31 to 48 percent, and the average annual earnings were $60,000,000.[74] The earnings on the assets from 1900 to 1906 averaged 25.2 percent.[75] The net value of the assets at the close of 1906 was $359,400,193, and the earnings for the year were $83,122,251, or 121 percent on the original investment.[76] A 40 percent dividend on the capital stock left a surplus for the year amounting to $43,786,931.

Frank B. Kellogg, Special Counsel for the Government in the dissolution suit, says the Standard Oil had, in 1906, "a $261,068,811 surplus and since that time for five years it has been piling up more surplus at the rate of probably forty million dollars per annum (beside a dividend of about 40 percent per annum) so that its total assets at the time of the dissolution (1911) undoubtedly amounted, on the books of the Company, to over $600,000,000. What the real value was beyond the book value, no one knows to this day. * * * No corporation ever existed in this country with such earning capacity or such secrecy in its business." [77] On the whole the profits have shown a remarkable increase from year to year and enormous earnings in periods when most other manufacturing concerns were losing money.

[71] Brief of Facts and Argument for Petitioner, V. I, p. 168.
[72] Ibid., p. 168.
[73] Ibid., p. 169.
[74] Ibid., pp. 168, 173.
[75] Ibid., p. 171.
[76] Ibid., pp. 166, 171.
[77] American Review of Reviews, V. 45, pp. 729-30.

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These steady, exorbitant and monopolistic profits have been obtained by maintaining through unfair competitive methods and advantages the control of from 85 to 97½ percent of the business of transporting, manufacturing and marketing petroleum and its products.

The Standard monopoly is further shown in the movement of oil prices.[78] The increased profits were not due to an increased volume of business alone. The average price of refined oil at the refineries for the four year period 1895-1906 was 5.6 cents, while for the four years 1903-1906 it was 7.8 cents, an increase of 2.2 cents per gallon.[79] On the same basis naphtha increased from 5.87 cents to 9.71 cents. The costs represented in these figures were those of pipe-line transportation, refining, and crude oil. The pipe-line transportation had not increased.[80] The increase of refining cost per gallon was very insignificant.[81] The average price of crude oil consumed increased about ¾ of a cent, being 2.09 cents for the first four year period and 2.87 cents for the latter.[82] A similar comparison of the crude oil prices with the average price for the principal finished products, refined oil, gasoline and paraffin for the two periods shows that the margin per gallon increased from 4.37 to 6.55 cents, an increase of 2.18 cents, or exactly 50 percent.[83] The margins were sufficiently high for the first period to secure excessive earnings. Each additional cent per gallon on the products sold by the Standard in 1904 made a profit of $14,000,000. This increased margin largely accounted for the rapid increase of earnings beginning about 1896-7. In no previous year had the Standard made a profit exceeding 1.9 cents per gallon on the crude oil. In 1903 the Standard made a profit of 3.7 cents on every gallon of crude oil consumed by its refineries.[84] The

[78] Brief of Facts and Argument for Petitioner, V. I, pp. 182-5.
[79] Ibid., p. 196.
[80] Ibid., p. 200.
[81] Ibid.
[82] Ibid., p. 204.
[83] Ibid.
[84] Ibid., p. 205.

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average for the period 1900-1906 was substantially 3 cents per gallon. The Bureau claimed that ¾ of a cent per gallon was enough to make the whole industry profitable.[85]

Large price discriminations attended the sale of the Standard's products in the home markets. The powerful direct selling organization of the company, covering the entire country, always followed a policy of charging what the market would bear. Most glaring discriminations resulted from adjusting prices according to the degree of competition encountered. The Standard sold the bulk of its products under noncompetitive conditions and extended such conditions by aggressive price cutting, often selling below cost. In arriving at the margins of the above paragraph the marketing profits were not included. On all the products sold by the Standard in the United States between 1901 and 1906 the marketing profit ranged from 1.5 to 1.9 cents per gallon.[86] Some of the companies received as high as 4 and 5 cents profit per gallon on marketing.[87] In 1904 the average price of illuminating oil in the different Atlantic seaboard states dependent upon the same source of supply, after deducting transportation costs, ranged from 7.7 cents in Pennsylvania to 12.8 cents in Florida.[88] Similar differences ranging from 8.5 to 13.9 cents occurred in states supplied from the same refineries in the Lima-Indiana field. Equally great differences existed between individual cities. The average price per gallon in December, 1904, after deducting freight costs, was 7.5 in Worcester, 11.3 in Jersey City, 7.8 in Richmond, and 12.5 cents in Jacksonville.[89] These differences represented substantially differences in profit since these cities were all supplied from the seaboard refineries and under practically the same conditions of cost. In some cases net prices, after deducting freight, have been almost double those in another

[85] Report on Petroleum Industry, Part II, p. 55.
[86] Brief of Facts and Argument for Petitioner, V. I, p. 190.
[87] Report on Petroleum Industry, Part II, pp. 35-6.
[88] Walker, Pol. Sci. Quart., V. 23, p. 41.
[89] Report on Petroleum Industry, Part II, p. 34.

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locality in the same state.[90] Similar discriminations were practiced in the sale of gasoline.[91] The differences in the margins of profit between the large divisions, between states, and even between towns in the same state, make it certain that prices were adjusted according to the degree of competition encountered.

Even greater discrimination occurred in the sale of lubricating oils.[92] The Standard through the Galena-Signal Oil Company supplied about 97.5 percent of the lubricating oils used in the United States, Mexico and Canada.[93] Most of these oils were sold directly to the railroads and factories. The invoice price of the oils was alike to all railroads, but most of the railroads received a rebate. The data for 94 railroads showed that 41 paid the full invoice price, 17 paid 95.7 percent, 15 paid 85.5 percent, 12 paid 74.4 percent, and 8 paid 57.6 percent, while the Pennsylvania Railroad, the largest user, paid only 47.5 percent of the invoice price.[94] The Pennsylvania road tapped two large oil fields and passed through the regions where most of the independent refineries were located. It was therefore in a better position to harm the Standard. The less favored roads paid the excessive prices rather than buy from the independents because they feared to incur the displeasure of so large a shipper as the Standard and because of the Standard's influence in financial circles. The Standard also had a powerful influence in the directorates of some of the roads. As a result most of the roads refrained from buying of independents regardless of the prices or quality of oil offered, and bought from the Standard at prices double those established by competition. The excessive payment to the Standard for lubricating oils over a fair market value amounted to more than $2,000,000 annually. The annual profits of the Galena Company were over 100 percent on its net assets from 1902 to 1906.[95] In effect, the excessive

[90] Report on Petroleum Industry, Part II, p. 37.
[91] Ibid., pp. 508-520.
[92] Ibid., pp. 670-739.
[93] Ibid., pp. 671-2.
[94] Ibid., p. 677.
[95] Brief of Facts and Argument for Petitioner, V. II, p. 503.

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payments were the same as rebates to the Standard and show in a striking way the power of the Standard and the extent to which it is used.

There were also large discriminations against the domestic consumers in favor of foreign consumers.[96] From June, 1903, to August, 1905, the over-charge, after allowing for differences in quality of oil and transportation costs, amounted to two cents per gallon in the two largest export markets.[97] These lower prices abroad could not be attributed to an over-supply of oil. The Standard was crushing competitors in foreign fields. Such a policy was possible because the prices of domestic crude oil were reduced and the domestic consumer paid monopoly prices for the finished products.

The large economies and advantages obtained by the Standard did not benefit the consumer. The Standard always sought to prevent competitors from becoming large enough to secure the economies it possessed. The most important economy was pipe-line transportation. But it has been shown that the independents proved this economy first and that the Standard later obtained almost complete control over it by the most unfair methods. This advantage over competitors amounted to about ¾ of a cent per gallon of crude oil—enough to make the whole industry profitable.[98]

Another economy resulted from the location of refineries near the great consuming and shipping centers. Here again the independents were equally early in locating their refineries in the seaboard markets and chief consuming centers, but they were largely deprived of these economies by the Standard's exclusive use of pipe lines and by railroad discriminations. As a result the independent refineries not absorbed were usually smaller and disadvantageously located near the crude oil sources. The Standard's advantage in refining efficiency was estimated to be from ¼ to ½ cents per gallon. The marketing economy of the

[96] Walker, Pol. Sci. Quart., V. 23, pp. 39-41.
[97] Walker, Idem.
[98] Report on Petroleum Industry, Part II, p. 55.

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Standard could also be equally practiced in general by the independents, as it now is in places, if local price cutting and other unfair marketing methods were eliminated. The Standard is said to pay a profit to nobody. It elaborated its by-products and manufactured most of its supplies such as barrels and tanks. Its whole business is centralized and efficiently managed by men selected for each post, and these are supplied with all useful information.

The preferences continuously enjoyed by the Standard were of course not economies, but they gave an overwhelming advantage over competitors. Yet these advantages so exclusively enjoyed have not led to price reductions. Compared with the prices of crude oil the domestic prices of refined products showed a marked advance during the decade 1896 to 1906.

The Bureau of Corporations emphatically denied the claim that the position of the Standard in the oil industry was due to its superior efficiency and denounced such a claim as "a complete misrepresentation of the facts."[99] Its position was attributed to the continuous use of grossly unfair methods of competition.[100] First, in the attainment and use of its pipe line control. A second and equally unfair advantage was railroad discrimination, the cornerstone upon which the Standard built up its power and which continued to be one of the chief, if not the chief, element of its strength. The third unfair method was flagrant price discriminations. When monopoly control had been partially secured price discrimination became a powerful means both in maintaining it and in exacting prices far above the competitive level. Other unfair methods were deception as to the quality of products sold, short measure, extensive espionage, political activities, operation of bogus independent companies and the unfair manipulation of the system of public inspection of illuminating oils. If these unfair advantages were removed the Bureau believed that the Standard could not monopolize the oil industry. Had they not prevailed it believed that a limited number of oil concerns would have

[99] Report on Petroleum Industry, Part II, p. 58.
[100] Ibid., pp. 52-8; Part I, pp. 666-9.

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developed "each equipped with efficient methods of transportation, refining, and marketing, so that it could do business at practically as low a cost as that of the Standard to-day; and prices charged to the consumer would have been much lower than they now are."[101] With unfair methods and advantages abolished, the independents would assure the selling of oil in all parts of the country on the basis of reasonable prices and profits.

It was not until 1906, sixteen years after the passage of the Sherman law, that the Government filed a bill to dissolve the Standard Oil Company, the general charge being combination and conspiracy in restraint of trade in the production and sale of petroleum. The prosecution was aided by the elaborate investigations of the Bureau of Corporations. The taking of testimony was begun in September, 1907, and continued into 1909. The detailed facts covering a period of about forty years were so involved that the testimony taken for the case alone filled 12,000 printed pages.

The Circuit Court rendered a decree of dissolution in 1909.[102] From this decree the defendants appealed to the Supreme Court. In May, 1911, the Supreme Court by a unanimous vote sustained the dissolution decree of the lower court on the following grounds:

"(A) Because the unification of so vast a power and control in the New Jersey corporation caused a prima-facie presumption of intent and purpose to achieve and maintain a monopoly in the oil business by unusual methods.

"(B) This presumption was made conclusive by considering the conduct of those who brought about the New Jersey Combination, both before its organization during the days of the trust agreements of 1879 and 1882, and at the time of vesting power in the New Jersey Corporation, as well as by weighing the manner in which this power has been exerted and the results which have risen from it."[103]

[101] Report on Petroleum Industry, Part I, p. 332.
[102] 173 Fed. Rep., pp. 177-200.
[103] 221 U. S. 75.

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The relief asked for by the Government was:[104] (1) that the combination be held illegal and the parties thereto be perpetually enjoined from doing any further act to give effect to it; (2) that the transfer of stock of the various corporations to the Standard Oil Company of New Jersey be held illegal and the latter company be enjoined from exerting control over the subsidiary corporations in any manner, and (3) that specific relief by injunction be awarded against further violations of the statute by any of the acts specifically complained of in the bill. The acts specifically charged were grouped under the following heads by the Supreme Court:

"Rebates, preferences and other discriminatory practices in favor of the combination by railroad companies; restraint and monopolization of control of pipe lines, and unfair practices against competing pipe lines; contracts with competitors in restraint of trade; unfair methods of competition, such as local price cutting at the points where necessary to suppress competition; espionage of the business of competitors, the operation of bogus independent companies, and payment of rebates on oil, with the like intent; the division of the United States into districts and the limiting of the operations of the various subsidiary corporations as to such districts so that competition in the sale of petroleum products between such corporations had been entirely eliminated and destroyed; and finally reference was made to what was alleged to be the "enormous and unreasonable profits" earned by the Standard Oil Trust and the Standard Oil Company as a result of the alleged monopoly; which presumably was averred as a means of reflexly inferring the scope and power acquired by the alleged combination."[105]

In considering the remedy to be administered the Chief Justice explained that it must seek two things. 1st, to forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2nd, exertion of such measure of relief as

[104] 221 U. S. 43.
[105] 221 U. S. 43-4.

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will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.[106] The court referred to the need of adapting the law and the decisions to the changing conduct of combinations according to the rule of reason in order that the purpose of the law might be realized.[107] It said in reviewing the past trust suits that modern conditions were followed by new manifestations of conduct and dealing on the part of combinations which it was the purpose of the act to prevent. No arbitrary or absolute standards were to be followed and only contracts and combinations amounting to unreasonable or undue restraints of trade were held to be unlawful.

The Supreme Court affirmed the decree of the Circuit Court which declared the holding company to be illegal. The decree commanded the dissolution of the combination. It permitted the New Jersey Company to distribute pro rata to its stockholders all the stocks of the companies in the combination which were held by it. The company was enjoined from paying or receiving any dividends on the stocks held by it and from exercising any control over them except to transfer them. After the transfer was made the holders of the stocks in the subsidiary companies and the companies themselves were enjoined from in any way conspiring or combining to violate the act, either by acquiring stock interests in potentially competitive companies, or by placing the control of any of the corporations under a trustee, or by making any agreement, implied or expressed, as to the management of other corporations, or to regulate prices, sales, rates of transportation, or output.[108] Six months were allowed to carry out the dissolution plan.

In compliance with the decree of the Supreme Court, the Standard Oil Company of New Jersey sent a letter to its stockholders on July 28, 1911, announcing that:

"Obedience to the final Decree of the Case of the United

[106] 221 U. S. 78.
[107] 221 U. S. 57.
[108] 173 Fed. Rep. 200.

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States against the Standard Oil Company (of New Jersey), and others, requires this Company to distribute, or cause to be distributed, ratably, to its stockholders the shares of stock of the following corporations, which it owns directly or through its ownership of stock of the National Transit Company, to-wit: (Thirty-three corporations named)."

"Such distribution will be made to the stockholders of the Standard Oil Company of record on the 1st day of September, 1911."[109]

In this dissolution each of the 983,833 shares of stock in the Standard Oil Company, in addition to retaining one share in the present Standard Oil Company of New Jersey, received $\frac{1}{983.833}$ of the shares of stock in each of the 33 subsidiary companies among which the Standard interests were distributed. The capitalization of the Standard Oil Company of New Jersey remained as before at $98,338,300.

From the first there has been much question as to the effectiveness of the dissolution. Had it resulted in restoring competition, or had the Standard Oil combination, after its long, profitable career and flight from one defense to another through pool, trustee device, dissolution of 1892, holding company, and dissolution of 1911, at last reached a secure position amounting to legalized monopoly?

President Taft, who announced that the plan of the administration in prosecuting the trusts was to secure a decree of disintegration by which competition between its parts shall be restored and preserved, referred to the Standard Oil and Tobacco decisions as epoch-making.[110] Frank B. Kellogg declared this "decree accomplished everything that it is possible to accomplish under the Sherman Act. * * * The decree went further than any decree has ever done in any court."[111] Mr. Bryan says we have seen one result of this decision, i. e., rejoicing on the part of every man pecuniarily interested in the corporations which are exploiting the public.[112] There are others who feel that because of the scattering of the oil interests and the scrutiny

[109] Stevens, Industrial Combinations and Trusts, p. 462.
[110] Message to Congress, Dec. 5, 1911.
[111] American Review of Reviews, V. 45, p. 728.
[112] North American Review, V. 194, p. 10.

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of the Government the chief grievances of the past can no longer be practiced, especially since these were enumerated and publicly exposed.

Most economists in discussing the dissolution have expressed the belief that competition would not be restored with the passing of the holding company, and that there would be no break in the coordinate activities of the separate corporations. John Bates Clark says "we have dissolved the form of the combination known as a 'holding company' to substitute the form of combination known as a 'community of interest.' We have forbidden the usual methods of unified action, while leaving the motive for it as strong as before and a way to secure it open. The original owner of an independent refinery, after selling out to the Standard for stock, became, of course, a minority holder of insignificant importance in the larger company. After the dissolution, far from getting his own plant back, he became an insignificant minority holder in the corporation which controls it, as well as in many others in which he has no personal interests. He is a stranger in his own house without even a strong enough foothold on which to base an effective protest."[113] Jeremiah Jenks asserts that the dividends and prices of the stock of the various Standard Oil companies since the decision seem to justify the conclusion that although there has been a reorganization in form, the interests still remain in combination.[114]

The plan of dissolution was strikingly similar to the earlier dissolution of the Standard in 1892. At that time the Standard interests had experience with a pro rata plan of dissolution and they must have welcomed this plan when it was suggested by the court as the remedy. It is difficult to conceive of a milder form of dissolution. In the first dissolution each trust certificate entitled the holder to a fractional ownership in each of the companies controlled by the Standard interests at that time. In the present dissolution each share of stock in the Standard Oil Company which had been received in exchange for the trust certifi-

[113] The Control of Trusts, pp. 146-7.
[114] Jour. Pol. Econ., V. 20, p. 355.

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cate, share for share, entitled the holder to a fractional ownership in each of the companies controlled by the Standard interests nineteen years later. This did not lessen the control of the dominant shareholders. The same little group which owned a majority of the stock before the dissolution, afterwards owned a like majority in each of the 33 companies. In fact, the control of the dominant shareholders was rather increased since the small shareholders, because of their small and scattered interests and fractional shares, had relatively less control than before. They could elect the directors in the 33 companies, for the decree did not enjoin them from so doing. With such a plan of dissolution the further injunctions of the court obviously could not be expected to restore competition among the various companies which had worked together in such unison and prosperity for so many years. No attempt was made to break up the united pipe line control. Had the dissolution provided for some division of the pipe lines, refineries, and other oil interests between exclusive sets of stockholders together with certain restraining injunctions, the dissolution might have been effective.

Fear that a "Community of Interest" existed between the subsidiary companies was revived in 1912 when the Waters-Pierce Oil Company refused to count the majority votes of the Company that had been cast at the instance of the Standard Oil interests for the election of directors.[115] This refusal was based upon the ground that the shares were being illegally voted in furtherance of a conspiracy to violate and evade the decree of dissolution. Upon the refusal to count these votes the proxies named by the Standard Oil interests brought proceedings. Had the votes been counted, the election would have given the control of the Waters-Pierce Company into the hands of the Standard Oil of Indiana and its majority shareholders.

The respondents for the defense in this suit claimed that the decree against the Standard Oil had not been complied with in any substantial respect, and that the individual defendants in that suit still controlled all of the

[115] Stevens, Industrial Combinations and Trusts, pp. 516-524.

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subsidiary companies, including the Waters-Pierce Company, through concerted action in their ownership of stock of the Standard Oil of Indiana and other subsidiary companies.[116] They further charged that the dissolution was "a farce, a disguise and a pretext, and had made no change whatsoever in the relation of the companies or their direction, management and control."[117] In the opening legal skirmish of the Waters-Pierce suit, the court, by a temporary injuction, forbade Mr. Rockefeller and others to vote their stocks for the directors of their choice.

Apparently good results followed the above litigation for in the following year the Waters-Pierce Oil Company was succeeded by the Pierce Oil Corporation. Before this occurred, the Pierce interests obtained from the Standard interests the stock control and management. The new corporation issued $10,500,000 of stock and $8,000,000 of bonds. Each holder in the $400,000 of stock of the Waters-Pierce Oil Company received $1,250 in cash and $2,625 in stock of the new corporation for each share held in the former.[118] The importance of this company was largely due to its vast marketing system and facilities established throughout the Southern states and Mexico. In 1916 it has 1,122 main distributing stations serving 17,273 cities and towns.[119] The corporation is also engaged in producing, transporting and refining.

Evidently the "Street" did not take the Standard Oil decision seriously. When the case was in the courts, the stock gradually declined and reached a low level of $585. After the decision was rendered which finally dissolved the company, Standard Oil stock again rose until $900 was reached, more than $300 higher than when the company was under attack. Apparently the men, who knew best, did not believe that the dissolution would reduce the great profits which the Standard had enjoyed and which would now go to the constituent companies. From December 18, 1911, to March 12, 1912, the value of the shares of most

[116] Stevens, Industrial Combinations and Trusts, p. 527.
[117] Ibid.
[118] Moody's Manual, 1916, p. 3510.
[119] Ibid., p. 3510.

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of the subsidiary companies advanced greatly. A number of the stocks doubled in value, while the stock of one company trebled.[120]

To the many charges that the Standard Oil stocks advanced because of some defect in the Government's decree, Frank B. Kellogg replied that the reason "is perfectly plain to those familiar with the Standard Oil organization. Prior to the Government prosecution, the Standard Oil Company was a close corporation. It never published any statement of its assets and business even to its stockholders. All the public knew was that the Standard Oil Company stock paid a dividend of about 40 percent per annum, and its market value was regulated by these dividends. Its earnings were double this sum, but only a few insiders knew that fact. * * * Until the dissolution, in December, 1911, the stocks of the thirty-seven subsidiary corporations had never been sold on the market. They were in the treasury of the Standard Oil Company of New Jersey, the holding company. The Government, in the course of the trial, for the first time disclosed the large assets and earnings of these various companies, collectively and individually. But the reports of the trial were not, of course, generally distributed, and only gradually did the facts filter through the minds of the investing public. Moreover, so long as the suit was pending the stocks of the parent company naturally sold for much less in the market by reason of the uncertainty as to the outcome of the suit. When the Standard Oil Company was dissolved and these subsidiary companies stood upon their own foundations, and as their stocks began to be dealt in upon the market, gradually the amount of their assets became known and the stocks increased enormously in value."[121] No doubt this explanation points out one of the factors in bringing about the immediate stock value advances of the subsidiary companies, but it does not explain the effect on the stock value of the New Jersey Company following the anouncement of the kind of dissolution finally required, nor does it explain why the value of these

[120] Lit. Digest, V. 44, p. 665.
[121] American Review of Reviews, V. 45, pp. 729-30.

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stocks has continued to rise rapidly ever since, regardless of increased cash dividends and periods of general stock depression. The original Standard Oil stocks, including cash dividends paid, more than doubled in value in the first two years following the dissolution. There was, according to the Wall Street Journal, "a total profit in Standard Oil shares since the dissolution (two years) of at least 115 percent. On December 15, 1911, Standard Oil stock, which included the New Jersey Company and all subsidiaries, sold at $640 a share while to-day these shares are quoted around $1,230, an increase of $590 a share, or over 90 percent. Cash dividends paid by the Standard Oil Companies during the past two years have aggregated more than $160,000,000, equivalent to over 160 percent on the capital stock * * *, and equivalent to over 25 percent on the investment in the old shares at $640. * * * A review of the thirty-four companies included in the Standard Oil group for 1913, the second year of restored competition between these companies under the watchful eye of the Washington Government, discloses a state of prosperity probably unequaled by any other group of companies in the United States."[122]

The largest single cash dividend came in 1913 when the Standard Oil Company of New Jersey declared an extra 40 percent stating that the funds were received from the liquidation of loans to former subsidiary companies in observance of the spirit of the courts' decree.[123] When the shares of a company dominating this extensive industry, following a dissolution of the company, receive over 160 percent in cash dividends in two years and at the same time nearly double in market value, it would indicate that the control had not been lost or even badly jeopardized.

The large dividends and the appreciation in stock values which is shown above for the years 1912-13 continued without abatement during the next three years. The 33 companies declared larger cash and stock dividends. Two new companies were organized by the Standard group and the capital stock distributed as stock dividends. Both were

[122] Literary Digest, V. 48, pp. 740-2.
[123] Moody's Manual, 1916, p. 3523.

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pipe line companies organized to take over and consolidate pipe line transportation.[124] The first was the Illinois Pipe Line Company, organized in 1914, which exchanged its $20,000,000 of stock for the pipe line property of the Ohio Oil Company. The other was the Prairie Pipe Line Company, organized in 1915. The latter exchanged its $27,000,000 of capital for the transportation business and equipment of the Prairie Oil and Gas Company.

The market value of the old Standard Oil stock with its claim to fractional parts of the 33 companies increased from $640 at the time of dissolution to over $2,000 in 1916 in spite of increased cash and stock dividends. Few shares in this form appear on the market to-day. The table on page 100 gives the names of the 33 companies, together with the two new ones organized; the face value of each of the 983,383 shares in these companies at the time of dissolution; and the market value of such fractional shares based upon the stock quotations on October 9, 1916.[125]

Thus the market value of the equities represented by each of the 983,383 shares, which prior to the dissolution never exceeded $750 and at the time of dissolution was $640, rose rapidly to more than $2,000, or more than trebled in less than five years, and represented on this basis in the aggregate a market worth of nearly $2,000,000,000.

The rapid advance in the price of gasoline, accompanied by a decline in the quality, in 1915, led Congress to request an extended investigation of the petroleum industry by the Federal Trade Commission.[126] The demand for gasoline increased more than 200 percent during the five years prior to 1916, according to Van H. Manning, Director of the United States Bureau of Mines, and it increased 38 percent in 1915 according to the Commission.[127] The increasing use of gasoline made it the most important petroleum product although it constituted only about 25 percent of such products. In the face of the increasing demand the production of crude oil remained about the same in 1915

[124] Moody's Manual, 1916, pp. 3505, 3514.
[125] Ibid., 1912, p. 3602.
[126] Report on the Price of Gasoline in 1915, 1917.
[127] Ibid., p. 31.

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Name of Company	Face Value of Fractional Share at Time of Dissolution	Market Value of Same on Oct. 9, 1916
Anglo-American Oil	$4.86	$32.00
Atlantic Refining	5.08	42.20
Borne-Scrymser	.20	.81
Buckeye Pipe Line	10.17	21.15
Cheseborough Manufacturing	.28	3.93
Colonial Oil	.25	.15
Continental Oil	.30	15.68
Crescent Pipe Line	3.05	2.62
Cumberland Pipe Line	1.02	.95
Eurela Pipe Line	5.08	11.69
Galena Signal Oil	5.69	11.24
Galena Signal Oil (preferred)	1.72	2.39
Indiana Pipe Line	5.08	10.57
National Transit	12.94	8.28
New York Transit	5.08	10.67
Northern Pipe Line	4.07	4.19
Ohio Oil	15.25	179.99
Prairie Oil and Gas	18.30	79.43
Solar Refining	.51	6.70
Southern Pipe Line	10.17	21.86
Southern Penn. Oil	2.54	51.40
South West Penn. Pipe Line	3.56	4.06
Standard Oil of California	25.42	260.48
Standard Oil of Indiana	1.02	242.28
Standard Oil of Kansas	1.02	10.26
Standard Oil of Kentucky	1.01	15.21
Standard Oil of Nebraska	.61	5.13
Standard Oil of New York	15.25	173.16
Standard Oil of Ohio	3.56	29.89
Swan & Finch	.10	1.16
Union Tank Line	12.20	11.10
Vacuum Oil	2.54	45.14
Washington Oil	.07	.33
Waters-Pierce Oil	.28	6.76
Illinois Pipe Line	....	40.27
Prairie Pipe Line	....	80.98
		$1,447.07
Standard Oil of New Jersey		567.00
		$2,014.07

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and 1916, while the production of crude oil having the highest percentage of refined products, particularly that of the Mid-Continent field which produced 75 percent of the refinable oil, decreased. This resulted in a decrease of the gasoline content in the crude oil produced in 1915. The Commission estimated the gasoline content of the oil produced in this year to be 2,059,000,000 gallons.[128] In this year the production of gasoline products was 1,548,799,000 gallons.[129] Of this amount the Standard Oil group produced over 60 percent and sold about 65 percent.[130] These figures are very conservative since the Standard group had a large stock control in several of the chief outside companies. During the year, especially after July, the crude oil stocks held by the refineries greatly increased, thereby causing a scarcity of oil on the market. The Standard group, which held from 71 to 81 percent of the stock of crude oil, increased their supply more rapidly than the others.[131] This action caused a decline in the stocks of gasoline held by the refiners. The sales of gasoline in this year were 1,849,790,000 gallons, or about 39 percent greater than in 1914, and 60 percent greater than in 1913.[132] There was an increase of over 50 percent in the exports of gasoline products. From the previous high record of 209,546,000 gallons in 1914, they rose to 315,400,000 in 1915, or about 20 percent of the total production.[133] Of the total exports for the year the Standard group had 83 percent.[134]

In the sale of gasoline the Standard companies continued a division of territory including the whole country, and their marketing companies had distinct selling territories which were arbitrarily defined.[135] Little, if any, competition existed among them in the sale of gasoline. The inequalities in prices between marketing companies ranged

[128] Report on the Price of Gasoline in 1915, p. 41.
[129] Ibid., p. 2.
[130] Ibid., p. 9.
[131] Ibid., p. 3.
[132] Ibid., p. 31.
[133] Ibid., p. 4.
[134] Ibid., p. 33.
[135] Ibid., pp. 143-158.

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from 2 to 8 cents per gallon.[136] According to the Commission these inequalities could only be explained by the absence of competition among the marketing companies. Large shipments were made between the companies but the oil was not sold in competition. The absence of competition was attributed to the community of stock ownership resulting from the plan of dissolution ordered by the court in 1911.

The increase in gasoline prices in 1915 was much greater than was warranted by the costs of production.[137] The wider margin of profit was reflected in the earnings and in the sharp advances in stock values. The Commission declared that the advance could be only partly attributed to the decrease in the supply of light crude oils and to the increasing foreign and domestic demand.[138] Part of the advance was caused by buying up large stocks of crude oil which were withheld from the market and by arbitrarily and unequally advancing the price of gasoline in the different sections corresponding to the Standard's marketing districts. The Commission believed that the absence of competition among the Standard companies was an "appreciable" factor in bringing about the price advance in 1915.

Another report of the Federal Trade Commission shows conclusively that the Standard Oil interests have maintained a monopoly control and use of the pipe line transportation.[139] Although the Hepburn law of 1906 required pipe lines to act as common carriers and conform to the Act of 1887 as to reasonable rates, discrimination, filing of rates and the supervision of the Interstate Commerce Commission, they have not served as common carriers because of unreasonable rates, excessive minimum shipping requirements and refusal to transport oil for others. It was not until 1914 that the validity of the law was settled. After this year all the pipe lines filed tariffs, but up to the present time the

[136] Report on the Price of Gasoline in 1915, pp. 6-7.
[137] Ibid., p. 159.
[138] Ibid., p. 16.
[139] Letter of Submittal and Summary and Conclusions of the Report of Federal Trade Commission on Pipe-line Transportation of Petroleum, 1916.

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Interstate Commerce Commission has not determined what are reasonable rates and requirements.

The report of the Trade Commission covered pipe line transportation in the Mid-Continent field. This field, whose crude oil had the highest percentage of refined products, had become by far the most important oil field, with a production of about 98,000,000 barrels or about 37 percent of the total production in 1914.[140] If the lower grade oil of California were excluded the production of the field would be 60 percent of the total. In the same year, 30,614,764 barrels, an amount equal to about 60 percent of the total production east of the Mississippi, were piped from this field to points east of the Mississippi and thus came into competition with the oil produced east of this river. But practically all of the oil belonged to the Standard interests and was piped over their own pipe line, the only pipe line connecting the Mid-Continent field with the eastern refineries. This trunk line had three to five pipes most of the way and connected with other Standard lines at Griffith, Indiana, near Chicago. It had the largest capacity, the fullest use of its capacity and the lowest costs of any line operating in the field. This favorable situation was largely due to the fact that it was the only line running to points east of the Mississippi. Prior to 1914 the line refused to transport oil for others and filed no tariff. Following the ruling of the court it then filed a tariff containing excessive rates and placing the minimum shipment at 100,000 barrels without even agreeing to deliver the same oil shipped but merely the same quantity minus a small percentage for loss in transit.

Moreover, there was no opportunity for independents to compete with the Standard by rail shipments to eastern points. The rail rates to seaboard points were 100 percent higher than the pipe line rates, being $1.40 per barrel for the former and 70 cents for the latter.[141] The transportation cost is a vital factor in the oil business. During 1915 the pipe-line charge from this field to the seaboard points was from 58 to 175 percent of the price of crude oil at the

[140] Letter of Submittal and Summary and Conclusions of the Report of the Federal Trade Commission on Pipe-line Transportation of Petroleum, 1916, p. 5.

[141] Op. Cit., p. 23.

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wells. If rail rates were used these percentages would be doubled. The Standard's advantage in pipe line control was sufficient in itself to maintain a large degree of monopoly in the oil industry. The independents did not attempt to build a line to the east because the Standard interests owned all the connecting trunk lines between the Mississippi and the Appalachians and the independent refineries in the region were small and scattered. The prohibition costs and the severe and unfair competition which was almost sure to follow prevented the small companies from building lines to the large consuming and distributing markets. Thus the oil piped by the Standard to eastern points—an amount equal to about 60 percent of the total production east of the Mississippi—did not come into competition with other oil from the Mid-Continent field.

In addition to the one described above there were four other large pipe line systems operated in this field, having their outlets at Gulf points. Of the four systems the Standard group owned one and the Standard capitalists controlled a second. Thus the Standard had outlets from the field both to the east and the Gulf. None of the four systems acted as common carriers, and with few exceptions they transported their own crude oil for their own or affiliated refineries. Their rates and shipment requirements prevented the small concerns from competing with the larger refineries affiliated with pipe line companies. They supplied the refineries in Missouri, Kansas, Oklahoma, Texas, and Louisiana and delivered large quantities for the export trade. Two of the lines passed through the Texas field which produced 13,117,528 barrels in 1914. Only about 3,500,000 to 6,000,000 barrels were shipped by water from the Gulf to the North Atlantic refineries from 1913 to 1915. Of this amount the Standard handled large quantities, but the proportion is not known.

As already noted there were wide margins between the pipe line rates and cost of pipe line transportation. The trunk line rates from this field were from one to six times the cost of transportation including six percent on the investment.[142] For all five pipe line systems the average net

[142] Op. Cit., p. 19.

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investment for the three years 1911-1913 was $38,522,728 and the average net earnings based upon the tariff rates would be 44.4 percent.[143] The large trunk line of the Standard running to Griffith, Indiana, whose net investment averaged over $31,000,000, would have received on the same basis an average return of 68.8 percent.[144]

The Trade Commission concludes that the small refiners who are wholly dependent upon rail rates cannot compete with those controlling their own pipe lines, or even with those who can secure pipe line service at the existing pipe line rates.[145] As a result the small refiners are usually located near the oil regions, while the refiners using pipe lines are able to locate their refineries near the large consuming and distributing centers, thus securing an additional advantage over their weaker rivals. The transportation of refined oil through pipe lines is unusual. The small refiner in the oil region cannot effectively compete in the sale of his product in the chief markets. Reasonable rates and equitable shipping conditions on the part of pipe lines would enable small producers and refiners to transport oil not only from the Mid-Continent field, but from the other fields, and would restore general competition throughout the country both in the sale of crude oil and its refined products.

The Trade Commission, as did the Bureau of Corporations, considered the practicability of requiring pipe lines to serve as common carriers. Both agree that it is practicable and that every principle of justice demands it. More recently the Bureau had occasion to investigate the working of the Oklahoma pipe-line law which requires that pipe line companies must either purchase all the current output of each producer or take such proportion of his output as his production bears to the total production. The pipe line is allowed thirty days in which to correct inequalities. The law had not been in operation long enough to arrive at definite conclusions. No plan will be equitable to the public and to the refiners and producers not having their own pipe lines unless it provides for reasonable rates.

The report of the Trade Commission plainly shows the

[143] Op. Cit., pp. 17-18.
[144] Op. Cit., pp. 17-18. [145] Op. Cit., pp. 26-7.

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monopoly control of the Standard group in the Mid-Continent field which is the most important oil region. It has also been pointed out how the Standard interests maintained control of pipe line transportation in the eastern oil fields, the next most important fields, following the legislation of 1906, by refusing to serve as common carriers. The Standard group still controls all the trunk lines between the Mississipi and the Appalachians in which region the independent refineries are small and scattered. From a consideration of the amount and quality of oil produced in the Mid-Continent and eastern oil fields, and of the proportion of oil from these fields controlled by the Standard interests it would appear that this group has in the great consuming sections of the country nearly as dominant control as it formerly had. The chief bulwark of the oil monopoly remains—a fact not due to the voting public which has frequently voted the power to end it. The solution lies in removing the artificial advantages and unfair competition. There are refiners and producers ready and able to compete under equal conditions. Our fear should be lest the Standard group aided by its unfair advantages and profits should succeed in increasing its control over the crude oil supply to such an extent that the mere removal of artificial advantages would not be sufficient. Monopoly secured by direct control of the raw materials might be more difficult to cope with.

The Federal Trade Commission suggested four remedies for conditions in the oil industry.[146]

1. That the ownership of the pipe lines be separated from the other branches of the industry.

2. That the Government publish statistics concerning the petroleum industry, as it does now in several other industries. Reliable knowledge of conditions would prevent large fluctuations in price by allowing an adjustment between supply and demand.

3. That the Government classify gasoline products according to quality, and require that all petroleum products sold as gasoline meet a certain test which would make it suitable for combustion engines.

4. That the control through the common ownership of

[146] Report on the Price of Gasoline in 1915, pp. 16-18; 158-164.

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stock be prevented. To this end five courses of possible action were suggested.

(a) Action by the Department of Justice in view of the facts disclosed by the Commission's investigation.

(b) An act of Congress providing for the reopening of antitrust cases by a bill of review, the action for review to be taken by the Attorney General whenever a dissolution was found to be ineffective either because of a defective plan or through changed conditions.

(c) Federal legislation prohibiting, in certain cases, the common ownership of stock in corporations which have been members of a combination dissolved under the Sherman law.

(d) Placing an effective limitation upon common ownership of stock in potentially competitive corporations by withdrawing the power of voting and control.

(e) Legislation making the owners of stock personally responsible for the acts of the companies, which aim to prevent competition.

The almost complete ineffectiveness of the merely legal dissolution of the Standard Oil Company is a striking example of the lack of adaptation on the part of the courts for the work of reorganizing complicated industries. The oil trust against which so much important legislation has been directed has been allowed to build up merely from earnings an investment of $2,000,000,000. This has been accomplished through the unparalleled use of unfair methods of competition and defiance of law by means of which it obtained and maintained its monopolistic position in the oil industry for over forty years. That after costly investigations and trials the trust should pass through two court dissolutions unharmed and unreformed, and be allowed to continue its monopolistic control in the interest of a few is a travesty upon justice. This dissolution, which largely overshadows the good accomplished by the Government in its policy of suppressing trusts, has been a large factor in bringing into existence additional trust legislation and the Federal Trade Commission.

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CHAPTER IV

THE DISSOLUTION OF THE AMERICAN TOBACCO COMPANY

THE decision of the Supreme Court in the American Tobacco Company case was rendered only two weeks after the Standard Oil. Its chief significance was in the size and complexity of the combination involved, the attitude of the courts in assisting to carry out the trust laws, and the nature of dissolution required.

In the production of tobacco the United States easily ranks first. Tobacco production, which had already become important in Colonial days, reached 949,357,000 pounds in 1909. The tobacco manufactures, which were valued at $416,695,000, gave this business eleventh place in the ranks of our industries according to the value of their products.[2] Of the total value of tobacco products, cigars made up approximately 60 percent and chewing and smoking tobacco about 30 percent. The classes of tobacco manufacture distinguished by the Bureau of Internal Revenue, together with the output of each class in 1909, were:[3]

Cigars	Number	6,667,774,915
Little cigars	"	1,043,023,559
Cigarettes	"	6,836,652,435
Plug	Pounds	173,418,223
Twist	"	14,625,975
Fine-cut	"	12,481,100
Smoking	"	202,374,654
Snuff	"	28,454,958

The history of the tobacco combination which is given in the Report of the Commissioner of Corporations on the To-

[1] Report of the Commissioner of Corporations on the Tobacco Industry, Parts I, II, and III. Hereafter referred to as Report of Bureau; 221 U. S. 155-175; 191 Fed. Rep. 371.

[2] United States Census, 1910.

[3] Commissioner of Internal Revenue, Annual Report, 1910, pp. 108-9.

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bacco Industry shows that the concentration of control began in 1890 when five companies controlling over 90 percent of the cigarette production united to form the American Tobacco Company of New Jersey.[4] The company's capital stock of $25,000,000 was over six times the value of the tangible assets of the five companies and nearly two and one-half times their value including good will.[5] From this significant beginning the rapid growth of the combination was the result of new acquisitions and frequent realignments. The capitalization was kept excessive by issuing new securities against the good will of the combination, a practice made possible by large profits. The capital stock was increased to $35,000,000 the second year and the control of the cigarette trade was further increased by buying up several competitors and by making exclusive contracts with others for the use of patented cigarette machines. Not a year passed without the acquisition of some competing concerns.

In 1894 the American began a plug tobacco war which lasted four years; it sold plug tobacco at greatly reduced prices, and a few popular brands, including the "Battle Ax," below the cost of production.[6] The American sacrificed over $4,000,000, but it rapidly increased its control in the plug tobacco business.[7] Between 1891 and 1898 fifteen active tobacco concerns were acquired. For ten of the plants an all cash payment of $6,410,235 was made, while $1,115,100 in cash and $4,123,000 in stock were given in payment for the other five. In 1898 many of the leading independents left in the plug business, wearied by such competitive methods, were induced to join in a combination of the plug tobacco companies.[8] This resulted in the formation of the Continental Tobacco Company with a capital stock of $62,290,700, which took over the plug business of a number of the leading independents and of the American Tobacco Company. One of the leading independents ac-

[4] Report of Bureau, Part I, p. 2.
[5] Ibid., Part II, p. 8.
[6] Ibid., Part I, p. 2.
[7] Ibid., 221 U. S. 160.
[8] Report of Bureau, Part I, p. 3.

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quired was the P. Lorillard Company. The Continental gave $6,000,000 of its stock for all the common stock, which controlled the Lorillard Company. The latter continued its business, labelling and marketing its products as if it were an independent concern. After increasing its capital stock to $97,690,700 in 1899, the Continental acquired the Liggett and Myers Tobacco Company, the largest and most important plug tobacco company. For $5,000,000 in cash and the assets of the Liggett and Myers, the Continental gave $35,000,000 of its own stock, half preferred and half common. This acquisition gave the Continental 60 percent of the plug business.[9] The Continental then proceeded to acquire the stock and business of other concerns giving in payment $29,863,600 more of its own stock.[10]

By the same transaction through which the Continental secured the Liggett and Myers, the American Tobacco Company secured control of the Union Tobacco Company, one of the strongest financial competitors of the American.[11] The Union Company had secured control of the Liggett and Myers. The American gave $12,500,000 of its stock for the Union company and at the same time it increased its own stock issue from $35,000,000 to $68,500,000.[12] The Union company was dissolved. With this and other acquisitions the American had by the end of 1899 as large a control of the smoking tobacco as the Continental had of the plug business.[13] The American's increased capital stock not used for acquiring other concerns was largely disposed of in 1899 by declaring a stock dividend of $21,000,000 or 100 percent on its common stock.

In 1900, the American and the Continental companies secured control of practically all the important snuff concerns of the country. The control of the business was acquired through the American Snuff Company, which was organized for this purpose in 1900 with a capital stock of $23,001,700.[14] The two largest independent snuff com-

[9] Report of Bureau, Part I, p. 100.
[10] Ibid., pp. 3, 103.
[11] Ibid., pp. 73-6.
[12] Report of Bureau, Part II, p. 2; Part I, p. 75.
[13] Ibid., Part II, p. 2.
[14] Ibid., Part I, pp. 5-6.

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panies were the Atlantic Snuff Company, the most important company in the field and itself a combination of snuff companies, and the George W. Helme Company. These were both acquired by the American Snuff Company for about $13,000,000 of its own stock, and as part of the agreement the officers and directors of the acquired companies agreed to keep out of the snuff business.[15]

The combined interests in 1901 entered the cigar business. This was the most important branch of the tobacco manufacture, but it was also the most difficult in which to secure an effective control because of the immense number of concerns in the trade. The small amount of capital required and the large percentage of cost due to labor, enabled small companies to engage in the cigar trade. In 1901 the combination organized the American Cigar Company with a capital stock of $9,965,000. Soon afterward $10,000,000 of gold notes guaranteed by the American and Continental companies were issued by the new company. Later the preferred stock was increased by $10,000,000. The American Cigar Company took over most of the cigar business of the combination, and also purchased many other cigar companies before the close of the year, making it the largest single manufacturer of cigars in the country. Among the first important acquisitions was the Havana-American Company, which controlled an annual output of about one hundred million high-grade cigars, chiefly made from Cuban tobacco.

In 1901, the leading interests in the American and Continental companies, in order to centralize the control of the tobacco industry, organized the Consolidated Tobacco Company, a holding company with a capital stock of $30,000,000, later increased to $40,000,000, all paid in cash.[16] This company acquired practically all the common stock of the American and Continental companies, issuing in exchange therefor $157,378,200 of 4 percent bonds. Six men who had been very influential in the two companies received over half of the stock of the Consolidated company, thereby

[15] 221 U. S. 168.
[16] Report of Bureau, Part I, pp. 7-9.

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placing themselves in a position to dominate the entire combination.[17] This resulted in a greater concentration of profits, as well as of control. The Consolidated was a great financial success. After paying interest on its preferred stock and bonds, there accumulated for the common stock, during three years and four months, a profit of fully $3,000,000.[18] The capital stock, paid in cash, and the large profits were available for an expansion policy, and enormous sums were expended in extending the operations of the combination, both at home and abroad.

A competitive warfare of extraordinary vigor was launched in 1901 to secure control of the tobacco business of Great Britain.[19] In the same year thirteen of the leading tobacco manufacturers of Great Britain and Ireland, in order to resist the invasion of their market, combined to form the Imperial Tobacco Company. Toward the end of 1902 an agreement was effected which ended the war. The American interests relinquished their entire business in Great Britain and Ireland to the Imperial. The latter, on its part, agreed not to manufacture or sell tobacco in the United States or its dependencies or in Cuba. The American and Imperial interests then joined in organizing a third company to exploit the tobacco business of the rest of the world. This was the British-American Tobacco Company organized in 1902 under the laws of England, with a capital stock of $25,369,302. The American and Imperial interests which owned this stock in the ratio of two to one, respectively, turned over their foreign trade to the new company. In the same year, through the activity of the American Cigar Company, the American secured a strong position in the cigar business of Cuba. The Cuban business was taken over by the Havana Tobacco Company which was organized for this purpose in 1902.

Among the numerous domestic cigar companies purchased or formed by the combination about this time were the United States Cigar Stores Company and the American

[17] Report of Bureau, Part I, p. 9.
[18] Ibid.
[19] Ibid., pp. 9-10; 165-176.

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Stogie Company. The former, organized in 1901, handled the retail business of the combination, and rapidly obtained an influential position. The combination also entered extensively into the manufacture of stogies, a cheap form of cigars made chiefly by machinery. The American Stogie Company was organized in 1903 with $11,855,000 of stock by the American Cigar Company for the purpose of acquiring a combination of the leading stogie manufactures.[20] The American Cigar Company also obtained control of a number of other cigar companies and of a dozen or more wholesale or retail companies.[21]

During the rapid expansion following the formation of the Consolidated in 1901, the combination also engaged in numerous contributory enterprises connected with the manufacture of tobacco.[22] Two of these related to licorice paste and tin-foil. Licorice, next to leaf tobacco, is the most important raw material used. It constitutes from 15 to 30 percent of the weight and 6 to 16 percent of the factory cost of a large part of the plug tobacco.[23] About 40,000,000 pounds or 90 percent of the total output were used in the tobacco factories in 1908. The combination secured a monopoly control of the licorice paste business through the McAndrews and Forbes Company which was organized in 1902 with a capital stock of $7,000,000.[24] This new company absorbed control of the few remaining competitors, including the J. S. Young Company, giving the combination almost complete control of licorice. The price of licorice sold to the independents, who were dependent upon the combination for their supply, was the subject of much complaint, and in 1907 the McAndrews and Forbes and J. S. Young companies were convicted under the Sherman Law of monopolizing the licorice paste trade, and fined $18,000.[25] The tin-foil control was effected through the Conley Foil Company. This company acquired its chief competitor, the

[20] Report of Bureau, Part I, pp. 10-11.
[21] Ibid., pp. 26-7.
[22] Ibid., pp. 23-5.
[23] Ibid.
[24] Report of Bureau, Part I, pp. 24; 109-10.
[25] The Federal Antitrust Laws, Washington, 1916, p. 52.

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Johnson Tinfoil and Metal Company. These two companies supplied the tin-foil used by the tobacco combination.

In 1904 the American, Continental and Consolidated companies were merged into the (new) American Tobacco Company of New Jersey. This action followed the Northern Securities decision which condemned a pure holding company similar to the Consolidated. The merger further strengthened the position of the men in control of the industry and served to simplify the organization and the security issues. The securities of the new American were $255,292,100, consisting of $40,242,400 of common stock, $78,689,100 preferred, and $136,360,600 of bonds. All the securities were given in exchange for the securities of the three companies.[26] The preferred stock which was largely held by the public did not receive voting power. In 1906 ten men, seven of whom were directors, held over 60 percent of the common stock.[27] During the years 1908-11 the common stock received nearly one-half of the entire earnings as dividends.[28]

The new American continued to extend the control of the combination by the same methods that had characterized the latter throughout. Independents were acquired and restrictive covenants against reentering the business taken from the vanquished. Often the companies were secretly acquired and their operation as independents was persistently denied. As a result of frequent reconsolidation they became a complex structure of holding companies. In addition to this, the business of tobacco manufacture was specialized in separate plants which were coordinated to a very high degree. Many plants were abandoned in order to accomplish this object. The combination also developed one or two predominating brands for each of the various types or classes of tobacco products in order to promote concentration and economy in manufacture, and at the same time to afford greater protection against competition than could be secured by a multiplicity of brands. The existence of

[26] Report of Bureau, Part I, pp. 11-12.
[27] Ibid., p. 16.
[28] Ibid., Part II, p. 3.

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these leading brands presented great difficulties in dividing the business at the time of dissolution.

The monopolistic position of the tobacco combination is proven by the following table, which shows the percentage of the total production in the United States controlled by the combination in each branch of the trade from 1890 to 1910.[29]

Year	Plug	Smoking	Fine Cut	Snuff	Cigarette	Little Cigars	Cigars
1890	....	7.9	....	....	....	....	....
1891	2.7	18.0	3.3	3.6	88.9	....	....
1892	3.5	21.9	4.1	4.0	87.9	....	....
1893	5.9	21.7	4.7	4.7	85.3	....	....
1894	5.6	20.6	4.3	3.4	86.5	....	....
1895	12.4	22.5	4.3	3.9	87.3	....	....
1896	20.0	20.7	4.5	5.6	83.4	....	....
1897	20.9	22.7	4.6	4.8	80.0	....	....
1898	23.0	26.9	6.0	6.1	88.3	48.7	2.2
1899	56.3	54.3	48.5	32.4	94.7	54.7	4.0
1900	62.0	59.2	50.5	78.0	92.7	60.6	4.8
1901	67.7	57.8	48.1	80.2	88.9	73.3	10.9
1902	71.2	66.3	73.7	85.9	84.6	71.8	14.3
1903	76.9	67.1	77.6	89.4	83.9	57.9	16.4
1904	78.2	69.2	80.4	90.6	87.7	79.2	13.9
1905	80.7	68.7	81.7	93.8	84.7	78.3	13.3
1906	81.8	70.6	80.9	96.0	82.5	81.3	14.7
1907	80.5	72.4	81.4	95.7	81.7	90.8	14.5
1908	81.0	73.6	79.6	95.7	81.8	88.7	13.0
1909	83.3	75.3	80.1	96.1	83.6	89.0	13.1
1910	84.9	76.2	79.7	96.5	86.1	91.4	14.4

This table shows that the combination by 1902 had a monopolistic position in each of the chief branches of the tobacco business, except cigars. The minimum proportion of the annual output in the several branches following 1902 ranged from two-thirds to over five-sixths of the total output, except in cigars in which the greatest percentage was only one-sixth of the total. This monopolistic position was secured by improper methods of competition among which may be mentioned frequent reconsolidations for the purpose

[29] Report of Bureau, Part III, pp. 49, 84, 127, 138, 153, 181, 192.

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of centralizing control in the hands of a few and to hide the results obtained; restrictive covenants with competitors whose interests had been acquired; restrictive contracts with jobbers and dealers by which only the combination's goods could be handled; acquisition of stores and factories and their operation as independents; ruinous price cutting and trade wars waged with fighting brands, sometimes sold below cost; division of territory, both at home and abroad; monopolization of raw materials, especially licorice root; extended loans and credits to retail dealers; acquisition of stocks, trade-marks, patents and other essential elements of tobacco manufacture. The practice of acquiring and operating factories and retail stores as independents was a powerful weapon against the real independents and was looked upon by them as their worst enemy. Often its aim was to overcome the effects of anti-trust sentiment and union label hostility. The combination refused to deal with labor organizations and thereby caused much hostility among union men, who in turn favored the union-label goods of the independents.

The excessive capitalization and earnings of the combination are shown in part by the accompanying table which includes only the American, Continental and Lorillard companies. The subsidiary and contributory concerns of these companies and the American Snuff Company and the American Cigar Company groups, and the miscellaneous investments are not included. The table covers the years from 1890 to 1908, showing the revised value of good-will or intangible assets; total assets, including good-will at cash purchase value, used in direct business; and annual earnings based (a) upon total assets, (b) upon tangible assets alone.[80]

The table shows that the valuation placed upon good will was very large. Good-will is a legitimate and important investment, but no other basis than actual cost value could be used in analyzing monopolistic profits. Good-will was valued by the combination in 1890 by nearly two and one-half times its actual cost value as computed by the Bureau. Al-

[80] Bureau's Report, Part II, pp. 126-7; 133; 160; 163.

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	Good Will as Shown on Company's Books	Good Will at Cash Purchase Value as Computed by Bureau	Total Assets Including Good Will at Cost, Used in Direct Business	Percent of Tangible Assets	Percent of Intangible Assets	Earnings Based On	
						Total Assets	Tangible Assets
American:	(Three 000's omitted)						
1890	$21,555	$9,055	$13,881	34.8	65.2	18.1	52.0
1891	24,161	12,497	20,665	39.5	60.5	21.3	53.8
1892	24,704	13,039	22,528	42.1	57.9	21.0	49.9
1893	24,625	12,960	25,503	49.9	55.1	18.4	41.1
1894	24,416	12,918	25,265	48.9	51.1	20.0	41.0
1895	25,197	14,498	26,925	46.2	53.8	14.2	30.7
1896	24,856	14,158	27,515	48.5	51.5	12.4	25.5
1897	24,867	14,168	29,067	51.3	48.7	13.7	26.8
1898	24,903	14,205	29,046	51.1	48.9	12.3	24.2
American, Continental and Lorillard Companies:							
1899	106,376	35,630	75,946	53.1	46.9	8.5	16.1
1900	103,905	35,593	73,404	51.5	48.5	12.6	24.4
1901	103,871	36,892	75,343	51.0	49.0	16.3	32.0
1902	97,794	37,169	82,785	55.1	44.9	19.2	34.9
1903	95,411	38,501	84,673	54.5	45.5	22.2	40.8
American and Lorillard Companies:							
1904	129,427	38,435	82,102	53.2	46.8	19.8	37.2
1905	114,739	38,947	84,953	54.2	45.8	21.6	40.0
1906	112,393	39,038	88,583	55.9	44.1	23.6	42.2
1907	104,957	39,099	91,871	57.4	42.6	20.9	36.4
1908	104,938	39,079	102,254	61.8	38.2	19.8	32.0

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though the excessive valuation of good will was frequently reduced it was increased at each reconsolidation and in 1908 it was still valued at nearly three times its actual cost value. Had none of the excess valuation of good will been written off the over-valuation of good will would have amounted to over $110,000,000.[31]

The table also shows that the total assets used directly in the business of the companies, including good will at actual cost value, increased from $13,881,533 in 1890 to $102,354,917 in 1908. The percentage of tangible assets to total assets increased very gradually from 34.8 percent in 1890 to 61.8 percent in 1908. The earnings of the companies, based upon the total assets, were excessive throughout the entire period. The only year of relatively low earnings was in 1899, the year when both the tangible and intangible assets were greatly increased. During all other years the earnings ranged from 12.3 to 23.6 percent upon the total assets, and from 24.2 to 52 percent upon the tangible assets. For the five year period beginning with the last reorganization (1904-8) the earnings averaged 21.1 percent of the total assets and 37.5 percent upon the tangible assets.

The earnings of the subsidiary tobacco and contributory concerns of the American, Continental and Lorillard companies were, during the years just prior to 1908, even higher than for the parent companies. The total assets of this group were $35,416,727 in 1908. While the assets of the group were about one-third of the combined assets of the parent companies, the earnings were more than one-half as large as those of the parent companies. The investment of the American Snuff Company group was $19,390,676 in 1908. No other group had higher earnings.[32] The investment of the American Cigar Company group was $24,721,032 in 1908, and the earnings were much lower and more irregular than for the companies in other branches of the tobacco industry.[33] The miscellaneous investments of the combination amounted to $58,669,441 in 1908.[34] Some of

[31] Report of Bureau, Part II, p. 13.
[32] Ibid., pp. 305, 306.
[33] Ibid.
[34] The stocks held were computed at their book value.

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these investments brought large dividend returns, others less, and some none. The rate of return upon the total miscellaneous investment was much less than upon the investment in the direct tobacco business, the average rate of return being 7.4 percent from 1904-1908.[35] Among the investments bringing the largest returns were the stocks held in the Imperial British American and Porto Rican-American companies.[36]

The total investment of the tobacco combination in direct business and miscellaneous forms for the years 1904 and 1908 was distributed as follows:[37]

	1904	1908
American and Lorillard Companies.	$82,102,088	$102,254,917
Subsidiary tobacco and contributory group	29,168,940	35,416,729
American Snuff Company group	14,574,917	19,390,676
American Cigar Company group	20,248,790	24,721,032
Miscellaneous investments	64,857,337	58,669,441
Total	$210,952,072	$240,452,795

The profits obtained from each branch of the trade furnish a better test of monopolistic control in the tobacco industry than the general average profit. The rates of profit varied with the degree of monopolistic control, the greater the degree of control in each branch of the trade the greater was the rate of profit.[38] In the plug, smoking, and fine cut branches the rate of profit became much higher as the control of the annual output began to exceed 50 percent. The profits in the cigarette branch had been high ever since the beginning of the combination in 1890. In no branch were the profits so high and the variations from year to year so small as in the snuff branch where the control was most complete. On the other hand, the comparative unprofitableness of the cigar branch, where no large control was ever obtained by the combination, stands in sharp contrast with

[35] Report of Bureau, Part II, p. 303.
[36] Ibid.
[37] Ibid., p. 305.
[38] Ibid., Part III, pp. 2, 3, 54, 89, 131 and 140.

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the profitableness of the other branches where a high degree of control prevailed. The influence of competition in preventing excessive profits is well shown. The rates of profit for the combination were two to three times higher than the most important and prosperous companies received before the formation of the combination. When the comparison is made between the earnings of the combination and independent companies of the years prior to 1910, the disparity of earnings is even greater. For these years the rates of profit, based upon the tangible assets, were from two and one-half to four times greater than for the more important and prosperous of the independents.[39]

Several other evidences of monopoly and its abuse may be noted. The most striking illustration of the combination's ability to fix and maintain prices was shown at the time of reducing the internal revenue taxes in 1901-2. During the Spanish war period practically all the manufacturers in this field increased their prices to offset the increase of taxes.[40] During 1901-2 the taxes were reduced 6 cents per pound on manufactured tobacco, 42 cents per thousand on cigarettes, and 46 cents per thousand on little cigars, but the combination companies made practically no change in prices to the jobbers and left the prices to the consumer unchanged,[41] and thus profited by substantially the whole extent of the tax reduction, though Congress intended by the reduction to benefit the consumer. The combination added millions of dollars to its annual income as a result. Its most prosperous years were from 1903 to 1908.[42] The reduction of the tax was sufficient to have enabled the use of the statutory sizes of packages in use before the war.[43] Another evidence of monopoly control is shown by the fact that while prices of the principal brands of products remained practically unchanged for the consumer from 1901 to 1910, the prices of these products were materially increased to the jobbers, there-

[39] Report of Bureau, Part II, pp. 331-332.
[40] Ibid., Part I, p. 245.
[41] Ibid., Part III, p. 6.
[42] Ibid., Part I, p. 152.
[43] Ibid., Part III, p. 7.

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by reducing the margins for the dealers and jobbers.[44] The constancy of prices retained over long periods of time and with usually higher prices for each succeeding period since 1890 is further evidence of a unity of control. There was also concerted suppression of competition in the purchase of leaf tobacco. The attempt to bear down the price of leaf tobacco gave occasion for the rise of the "Night-riders" and their lawless violence in Kentucky and Tennessee, which was an attempt to curtail the leaf crop output and thus compel higher prices.

It is also proper to point out how the monopolistic control of the tobacco combination was used for building up individual fortunes through profits derived from inflated securities. An investment of $1,000 in the original $25,000,000 combination of 1890, if held intact, would have yielded by 1908, $5,030 in dividends and an increased market value of the securities to the amount of $4,800, making the investment in 1908 nearly eleven times what it was in 1890.[45] However, the bulk of the original stock was exchanged for bonds of the Consolidated in 1901, and in this case the investment increased a little over six times. The inflation of securities may be illustrated on a larger scale by showing the increased investment represented by the W. Duke Sons and Company, one of the original companies entering the combination.[46] This business was organized in 1878 with a capital of $70,000. In 1885 it was incorporated with $250,000. In 1890 it received $7,500,000 of the original stock of the combination. By 1908 the Duke business was the basis of a capitalization of $22,000,000 of par value stock and bonds, whose market value was $20,000,000. Dividends and interest received from these securities between 1890 and 1908 amounted to $16,935,000. Thus the Duke business valued at $250,000 in 1885 represented a market value of fully $37,000,000 by 1908. The large profits derived from earnings and inflated securities did not benefit

[44] Report of Bureau, Part III, pp. 7, 8.
[45] Ibid., Part II, pp. 310-11.
[46] Ibid., pp. 311-12.

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all the security holders proportionately, but chiefly the common stockholders, ten of whom owned 63 percent of such stock in 1906.[47]

In 1907 the Government filed a bill to dissolve the tobacco combination. The defendants were twenty-nine individuals, sixty-five American corporations, most of which were organized in the State of New Jersey, and two English corporations. The corporate defendants, exclusive of the foreign ones, were classified as the American Tobacco Company, primary defendant; five others as accessory defendants—American Snuff Company, American Cigar Company, American Stogie Company, McAndrews and Forbes Company, and Conley Foil Company; and the other fifty-nine American corporations as subsidiary defendants. The decision of the Circuit Court in 1908 was in many respects favorable to the Government.[48] Briefly, the decision dismissed the petition as to all the individual defendants, the United Cigar Stores Company, three of the subsidiary companies, and the two foreign companies. The remaining defendants were held to be in violation of the Sherman law and were restrained from continuing the purposes of the combination. Both sides appealed to the Supreme Court. The Government claimed that the relief granted was inadequate and that the petition should not have been dismissed as to any of the defendants.

In May, 1911, the Supreme Court rendered its decision. Concerning the disputed points it declared as follows: "In our opinion the case can be disposed of by considering only those facts which are indisputable." [49] The court declared that "the history of the combination is so replete with the doing of acts which it was the obvious purpose of the statute to forbid, so demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right

[47] Report of Bureau, Part II, p. 18.
[48] 164 Fed. Rep. 700.
[49] 221 U. S. 155.

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to contract and to trade but by methods devised in order to monopolize the trade by driving competitors out of business, which were ruthlessly carried out upon the assumption that to work upon the fears or play upon the cupidity of competitors would make success possible. We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations:

(A) By the fact that the very first organization or combination was impelled by a previously existing fierce trade war, evidently inspired by one or more of the minds which brought about and became parties to that combination.

(B) Because, immediately after that combination and the increase of capital which followed, the acts which ensued justify the inference that the intention existed to use the power of the combination as a vantage ground to further monopolize the trade in tobacco by means of trade conflicts designed to injure others, either by driving competitors out of the business or compelling them to become parties to a combination—a purpose whose execution was illustrated by the plug war which ensued and its results, by the snuff war which followed and its results, and by the conflict which immediately followed the entry of the combination in England and the division of the world's business by the two foreign contracts which ensued.

(C) By the ever-present manifestation which is exhibited of a conscious wrong-doing by the firm in which the various transactions were embodied from the beginning, ever changing but ever in substance the same. Now the organization of a new company, now the control exerted by the taking of stock in one or another or in several, so as to obscure the result actually attained, nevertheless uniform, in their manifestations of the purpose to restrain others and to monopo-

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lize and retain power in the hands of the few who, it would seem, from the beginning contemplated the mastery of the trade which practically followed.

(D) By the gradual absorption of control over all the elements essential to the successful manufacture of tobacco products, and placing such control in the hands of seemingly independent corporations serving as perpetual barriers to the entry of others into the tobacco trade.

(E) By persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade.

(F) By the constantly recurring stipulations, whose legality, isolatedly, we are not considering, by which numbers of persons, whether manufacturers, stockholders or employees, were required to bind themselves generally for long periods, not to compete in the future." [50]

The Supreme Court did not believe the relief granted by the Circuit Court was broad enough, and also that the Circuit Court erred in dismissing the bill against the individual defendants, the foreign corporations and their subsidiary companies, and the United Cigar Stores Company.[51] Instead of affirming or modifying the Circuit Court decree it was reversed. The Supreme Court gave instructions and directed the Circuit Court to enter a decree in conformity with its directions and conclusions. In determining upon this course the court was guided by three motives: giving complete effect to the statute, the least possible harm to the public, and protection to innocent stockholders.[52] The conviction that a prohibition of interstock ownership would afford only partial relief and that the unification and complexity of the consolidation made it impossible to formulate a remedy that would restore original conditions, deterred the court from decreeing any specific dissolution lest "any remedy it might suggest should operate to injure the public and perpetuate the wrong created." [53]

[50] 221 U. S. 181-6.
[51] 221 U. S. 185.
[52] 221 U. S. 185.
[53] 221 U. S. 185-6.

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The decree of the Supreme Court was:

1. "That the combination in and of itself as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of trade and an attempt to monopolize and a monopolization within the first and second sections of the Anti-trust Act.

2. "That the Court below, in order to give effective force to our decree in this regard, be directed to hear the parties by evidence or otherwise, as it may be deemed proper, for the purpose of ascertaining and determining upon some plan or method of dissolving the combination and of recreating, out of the elements now composing it, a new condition which shall be honestly in harmony with and not repugnant to the law." [54]

3. That six months be allowed to complete this arrangement with an extension of sixty days if necessary.

4. That in case no arrangement was made the court should prohibit defendants from interstate commerce by means of an injunction, or appoint a receiver over the whole property to give effect to the law. Pending adjustment the powers of the defendants were not to be enlarged. This arrangement was required to be made without unnecessary injury to the public or the rights of private property. Administrative power was granted to the lower court "to take such further steps as may be necessary to fully carry out the directions which we have given." [55]

In compliance with these directions the Circuit Court heard the parties for the purpose of determining upon a plan of dissolution. The plan adopted was proposed by the defendants. "The proposed plan was filed two weeks before this (final) hearing at which not only the parties, but any persons interested who might wish to express their views as friends of the Court, were given opportunity so to do. While the plan is correctly described as the proposed plan of the American Tobacco Company, since that corporation and the other defendants offer to carry it out, it should be remem-

[54] 221 U. S. 187-8.
[55] 221 U. S. 188.

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bered that in its present form the plan is the fruit of much discussion. For upwards of two months successive conferences, in the presence of two or more members of the Court, were had between the Attorney General and the Counsel and representatives of the Tobacco Company." [56] This group at the conferences also included the attorneys of all the defendants, "and nobody else was permitted to go to these secret conferences." [57]

The Circuit Court was not bound by the decree of the Supreme Court to accept the plan of the defendants, yet in discussing the plans submitted by the independents the Court said, "No time need be given to the consideration of these so long as there is no suggestion that the defendants will adopt them. On the contrary, counsel for the defendants expressly stated on argument that they would not undertake to carry them out. Presumably, they think they might better take their chances at a receiver's sale. This Court has neither authority nor power to carry out and enforce any plan of readjustment without the co-operation of the owners of the property, the holders of these stocks and bonds. It would be a sheer waste of time, therefore, to consider any plan radically different from the one now before us." [58]

The dissolution of the consolidation into fourteen companies was accomplished by one or the other of the following methods: [59] 1. By distributing by way of dividends, to the stockholders entitled thereto, securities of other companies held by the companies sought to be disintegrated. 2. By forming one or more new companies and selling to them property and business of the company to be disintegrated, in return for securities of the new companies, and distributing such securities to the rightful stockholders. 3. By sale of property and business for cash. 4. By forming a new company and transferring to it the property and business of the company to be disintegrated, for cash and new securities to be offered in exchange for the retirement of the se-

[56] 191 Fed. Rep. 373.
[57] Mr. Felix Levy, Hearings Before Senate Interstate Commerce Committee, p. 374, 1911-1912.
[58] 191 Fed. Rep. 375.
[59] 191 Fed. Rep. 391.

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curities of the vendor company. 5. By terminating all restrictive covenants and making all free to enter the business. 6. By radical changes in the voting rights of stock.

The first provision of the disintegration plan was for the dissolution of the Amsterdam Supply Company.[60] This company was a wholesale supply house used chiefly by the defendants and all of its stock was owned by them. The dissolution of this company was accomplished by converting its assets into cash and distributing them to its stockholders. Next all restrictive covenants, both foreign and domestic, were abrogated so that all were made free to enter the tobacco business.[61]

The disintegration of the five accessory defendant companies followed. First: The Conley Foil Company.[62] This company, whose plant was located at New York, completely owned the Johnston Tin Foil and Metal Company of St. Louis, including its $100,000 par bonds. These two companies were separated. The Conley Foil Company was required to cancel the bonds of the Johnston Tin Foil and Metal Company and distribute the stock of the latter among its own common stockholders. The American Tobacco Company which owned over half the stock of the Conley Foil Company was required to cease its interests in the latter company by a distribution of its Conley stock among its own common stockholders.

Second: The McAndrews and Forbes Company.[63] This company, which had two plants, produced about 90 percent of all the licorice paste manufactured in the United States. Over half of its product consisted of a single brand known as "Ship Brand." The McAndrews and Forbes Company was separated into two companies by the creation of a new organization—the J. S. Young Company—which received the Baltimore plant with assets valued at $1,000,000 and the brands of licorice paste manufactured at that plant. In payment, the J. S. Young Company issued $1,000,000 at par of 7 percent preferred non-voting stock and $1,000,000 of

[60] 191 Fed. Rep. 418.
[61] Ibid.
[62] Ibid., pp. 418-19.
[63] 191 Fed. Rep. 394-5; 419-20.

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common stock. The McAndrews and Forbes Company upon receipt of these securities distributed them to its own common stockholders. The decree required that the preferred stock thus received should be offered in exchange, at par, for preferred stock of the McAndrews and Forbes Company, and that all preferred stock remaining unexchanged be sold by January 1, 1915. This division gave the McAndrews and Forbes Company a licorice business, based upon the net selling value in the year 1910, of $2,514,184. Of this, $2,214,127 was derived from the sales of a single brand. Upon the same basis the J. S. Young Company received a business valued at $1,201,109. The American Tobacco Company, which held over two-thirds of the total $3,000,000 of common stock and one-fifth of the $3,758,300 of the non-voting preferred stock of the McAndrews and Forbes Company, distributed the common stock as a dividend to its common stockholders at the execution of the decree, and was required to dispose of the preferred stock by January 1, 1915.

Third: The American Snuff Company.[64] This company, which controlled 90 percent of the entire snuff business, held all the stock of the DeVoe Snuff Company and one-half of the stock of the National Snuff Company. The company was broken up into three companies by the organization of two new companies, the George W. Helme and the Weyman and Bruton Snuff companies, to which were conveyed certain plants, brands, and the holdings in the DeVoe and the National Snuff companies. This division, based upon data for 1910, was as follows:

	Tangible Assets	Net Income	Percentage of Value of Business
American Snuff.....	$5,075,969	$1,591,280	35.55
George W. Helme.....	4,909,000	1,259,280	28.95
Weyman & Bruton.....	3,691,588	1,293,759	27.68

Each of the new corporations paid for the property and business conveyed to it by the issue of $4,000,000 at par of 7 percent voting preferred stock, and $4,000,000 of common

[64] 191 Fed. Rep. 393-4; 420-21.

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stock. The American Snuff Company thus received $16,000,000 of these new stocks, of which the common stock was distributed as a dividend to its common stockholders. Preferred stockholders of the American Snuff Company were allowed to exchange at par proportionally their preferred stock of the American for preferred stock in the new companies. All such stock not exchanged and retired was to be disposed of by January 1, 1915. The American Tobacco Company, which held nearly half of the stock of the American Snuff Company, participated in the distribution, and in turn distributed the stocks of the Snuff Company to its common stockholders.

Fourth: The American Stogie Company.[65] The only assets of this corporation were all of the issued stock of the Union-American Cigar Company. The American Cigar Company held a small portion of its preferred stock, and $7,303,775 of the $10,879,000 of common stock. No other defendants owned any of its stocks. The American Stogie Company in dissolving was given the choice of converting its assets into cash and distributing them to its stockholders, or of effecting a reorganization as best it could; provided that in either event, there should be a separation into at least two different ownerships of the factories and businesses then owned and operated by the Union-American Cigar Company.

Fifth: The American Cigar Company.[66] This company controlled in 1910, 13.36 percent of the cigar business of the country. Among the companies held by it was the Federal Cigar Company. Through the Havana Tobacco Company, it controlled 24 percent of the total cigar production in Cuba, 46 percent of the total cigar exportation from Cuba; and 38 percent of the cigar exportation from Cuba to the United States. It also owned the Federal Cigar Company. The American Cigar Company was dissolved: (a) By selling to the American Tobacco Company for cash the stock it held of the Puerto Rican-American Tobacco Company which was engaged in cigar and cigarette making in Puerto Rico. The price paid was $350 per share or $2,301,-

[65] 191 Fed. Rep. 421.
[66] Ibid., 421-2.

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600; (b) By selling to the American Tobacco Company, all the stock of the Federal Cigar Company for $3,965,616; (c) By disposing of all interests in the American Stogie Company when the latter company dissolved.

The stocks and securities owned or acquired by the American Tobacco Company as has been set forth, either by purchase or as dividends from other accessory defendants, were distributed at the execution of decree; the distribution of the rest was deferred. The securities immediately distributed included the following classes:[67] The preferred stock of the American Snuff Company; the common stock of the American Snuff, George W. Helme, Weyman and Bruton, McAndrews and Forbes, and J. S. Young companies; the stock of the Conley Foil, Johnston Tin Foil and Metal, United Cigar Stores, R. J. Reynolds Tobacco, British-American Tobacco, Puerto Rican-American Tobacco companies; and whatever was received from the American Stogie Company upon its dissolution. These securities had a book value of $35,011,865.03 and an earning capacity of $9,860,410, or about 28 percent, in 1910. The book value was much less than the real value.

The deferred disposition of stocks, distributed in a like manner, was to be accomplished by January 1, 1915. It included the following securities: the preference shares of the British-American Tobacco Company; ordinary shares of the Imperial Tobacco Company; bonds of United Cigar Stores Company; and the preferred stocks of McAndrews and Forbes Company. While these securities remained in possession of the American Tobacco Company, the owners were enjoined from voting them, or from gaining them by foreclosure proceedings.

The most important provision of the dissolution plan was the division of the manufacturing assets and business of the American Tobacco Company with two new corporations organized for this purpose.[68] To these new corporations, the Liggett and Myers Tobacco Company and the P. Lorillard Company, were conveyed factories, plants, brands, busi-

[67] 191 Fed. Rep. 422-3.
[68] 191 Fed. Rep. 423.

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nesses, and capital stocks of tobacco manufacturing corporations. The corporations, which were named, were "to include proper and adequate storage houses, leaf tobacco, and other materials and supplies, provisions for book accounts, including in each case a ratable proportion of the cash held by the American Tobacco Company on December 31, 1910, so that each of the new corporations will be fully equipped for the conduct of the business of manufacturing and dealing in tobacco." [69]

At this time the American Tobacco Company had outstanding $52,882,650 of 6 percent bonds, $51,354,100 of 4 percent bonds, $78,689,100 of 6 percent preferred stock, and $40,242,400 of common stock.[70] It had also a surplus of $61,119,991.63 which would be further increased by the earnings for the year 1910, but from this surplus would be subtracted the $35,011,865, the book value of the securities to be immediately distributed as above provided.

In dividing the assets with the new companies the value of the tangible and intangible assets, such as brands, good will and trade marks, was figured separately. For each of the new corporations the annual earnings, based upon the year 1910, should be 11.02 percent on both kinds of assets. The division among the three companies was as follows: [71]

	Tangible Assets	Intangible Assets	Total	Earning Capacity
Liggett & Myers	$30,607,261	$36,840,237	$67,447,499	11.02%
P. Lorillard	28,091,748	19,460,752	47,552,501	11.02%
American	53,408,498	45,023,974	98,432,473	11.55%

The capitalization of the new organizations was as follows: [72]

	Liggett & Myers	P. Lorillard	Total
7% Bonds	$15,507,837	$10,933,488	$26,441,325
5% Bonds	15,059,589	10,617,461	25,677,050
7% Preferred Stock	15,383,719	10,845,981	26,229,700
Common Stock	21,496,354	15,155,571	36,651,925
	$67,447,499	$47,552,501	$115,000,000

[69] 191 Fed. Rep., p. 424.
[70] Ibid., p. 424-7.
[71] Ibid., p. 425.
[72] Ibid., p. 426.

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All the above securities of the new corporations were turned over to the American Tobacco Company as the purchase price for the properties and business received. Of these securities the common stocks were required to be sold at once for cash to the common stockholders of the American Company in proportion to their individual holdings. Three years were allowed to retire the bonds during which time they were to be deposited with the Guaranty Trust Company of New York. Each 6 percent bond holder of the American Tobacco Company was to be offered $120 cash for half of his bonds, and for the other half, the 7 percent bonds at par of the new companies. Each 4 percent bond holder was to be offered $96 in cash for half of his bonds, and for the other half, the 5 percent bonds of the new companies. Each preferred stockholder of the American was also to be offered the privilege of exchanging one-third of his preferred stock at par for 7 percent preferred stock of the new companies.

The effect of these changes was to pay off the entire bonded indebtedness ($104,236,750) of the American company and reduce its assets accordingly. All its remaining outstanding securities were its preferred ($52,459,400) and common stock ($40,260,400). As provided in the decree the preferred stock was given full voting rights so that the twenty-nine defendants would be deprived of a majority vote.

To insure competitive conditions despite the common ownership of stock and the unequal distribution of the tobacco business, the court relied upon certain restraining provisions of the decree.[73] (a) The defendants were enjoined from forming any combination similar to the one declared illegal, and from entering agreements or covenants, either foreign or domestic, with companies or individuals, similar to those rescinded by the decree. (b) The fourteen companies were enjoined without reference to time from (1) placing the stocks of two or more of them in a voting trust; (2) having a buying or selling agency in common with another company; (3) doing business secretly under any other name; (4) refusing to sell goods to jobbers in certain cases;

[73] 191 Fed. Rep. 428-30.

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(5) conveying the property or business of any one of them to any other; (6) making any agreement relating to price of leaf tobacco or its products, apportionment of business, jobbing agreements, and common officers or clerical forces, between two or more companies. (c) For a period of five years, the same companies were enjoined from (1) having common officers, directors, or agents for the purchase or sale of goods; (2) acquiring the stocks or property of any of the companies; (3) extending financial aid to them. (d) For a period of three years the twenty-nine individual defendants were enjoined from increasing their individual stock holdings in any of the fourteen companies, except one foreign company, but it was provided that any one of the defendants could acquire the stocks held in any of the companies by other defendants, or in case of death from their estates.[74]

The chief problems presented in the disintegration and reorganization of the tobacco combination were two. The first was, as far as was practicable, to eliminate the collective control of the twenty-nine individual defendants from the new companies. This problem was disposed of by several measures: Voting rights were conferred upon the preferred stocks; the common stockholders of the American Tobacco Company were required to purchase with cash the common stock of the new companies organized; the preferred stockholders of the American Company were allowed attractive exchanges of their stock for the stock of the new companies; the preferred stocks and other securities held by the American were to be disposed of either at once or by 1915; and to decrease the monetary influence of the American its bonded indebtedness was all to be paid, the bond holders being induced to exchange the bonds for the securities of the new companies at more favorable rates. The second problem was the distribution of the business of the combination in such a way as to make no part taken over by each concern monopolistic. This was solved by limiting the business of each concern to approximately one-third of the total business in any branch of the trade. The previous concentra-

[74] 191 Fed. Rep. 430.

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tion of manufacture, the extraordinary development of single brands and the difference in their profitableness made this distribution the most difficult feature of the disintegration.

In October, 1911, by privilege of the court, the National Cigar Leaf Tobacco Association, the Cigar Manufacturers' Association, and the Independent Tobacco Salesmen's Association through their counsel, Louis D. Brandeis and Felix H. Levy, submitted objections to the plan of dissolution filed by the American Tobacco Company.[75]

While this plan was afterwards modified in some parts the chief objections raised by these independents remained. The independents claimed that the plan would result "in legalizing monopoly instead of restoring competition. Its effects * * * would be more injurious than the continuance of the present illegal monopoly. There are five fundamental defects in the plan, each so serious that it forms alone a sufficient ground for the rejection of the plan.

"First (Community of Interest). The plan proposes to divide the main properties of the trust among several corporations legally distinct, but to distribute the stock in these several corporations pro rata among common stockholders of the American Tobacco Company. No plan can be effective to restore competition which does not include as an essential condition a provision that the separate corporations or segments which are to carry forward the business of the trust shall at the outset and for a limited period thereafter, be owned by absolutely distinct groups of individuals." [76] While the twenty-nine individual defendants were to have a smaller control, the independents claimed "that a legal majority of the stock of the corporation is not essential to actual control. A small minority may control; and as the same individuals would at the outset select the directors and the officers of each of these colorable competitors it is certain that the officers and directors of the several companies would be friendly if not in fact iden-

[75] Hearings Before Committee on Interstate Commerce, United States Senate, 62nd Congress, 2nd Sess., 1911-1912, pp. 315-350. Hereafter referred to as Hearings.

[76] Op. Cit., Hearings, pp. 314-15.

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tical." [77] They held that not only the twenty-nine defendants, but all who shared in the distribution should be enjoined from acquiring stock in the other companies. It should be remembered that the directors and four others together owned 77 percent of the common stock and that ten men, six of whom were directors, held 63 percent.[78] The Supreme Court had also said that "a mere decree forbidding stock ownership by one part of the combination in another part or entity thereof, would afford no adequate measure of relief." [79] The following table shows the defendants' percentage of control after the dissolution:

DISTRIBUTION OF THE BUSINESS OF THE TOBACCO COMBINATION [80]

Company	Capital and Surplus	Defendants' Percentage of Control
American	$138,611,344	35.16
Liggett & Myers	67,447,499	40.67
P. Lorillard	47,552,501	40.76
British-American	36,000,000	34.66
American Snuff	17,535,938	38.65
R. J. Reynolds	9,541,322	37.53
United Cigar Stores	9,000,000	37.65
Bruton & Weyman	8,000,000	28.44
G. W. Helme	8,000,000	28.44
McAndrews & Forbes	5,714,148	39.77
Puerto Rican-American	2,357,562	45.31
J. S. Young	2,000,000	43.87
Union-American	2,517,740	24.65
Conley Foil	1,215,321	33.88
R. P. Richardson, Jr. & Co	500,000	None
Hernsheim	400,000	None
Johnston Tin Foil and Metal	400,000	33.73
Total	$356,393,375	

To this objection of the independents the Circuit Court entrusted with dissolution said: "The main objection to the

[77] Op. Cit., Hearings, p. 316.
[78] Op. Cit., Hearings, Part I, p. 18.
[79] 221 U. S. 186.
[80] Political Science Quarterly, V. 128, p. 265.

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proposed plan, an objection found in every document filed by those who were given permission to be heard and which seemed to be principally relied on by those who spoke, is what is referred to as 'Common stockholding.' For instance, under the plan two new companies, 'Lorillard' and 'Liggett and Myers' will be formed out of the American, which will itself, thus reduced in size, continue in existence. The same individuals, the present 1,800 or more common stockholders of the American, will hold the entire common stock of each of the other companies. A similar condition will exist with some, at least, of the other companies. It is contended that, although under such circumstances there may be potential competition, no real competition can exist. With this argument or the reply to it, it seems to me this court is not concerned. In two recent cases (Northern Securities and Standard Oil) the Supreme Court * * * in the disintegration left the stock of the separate entities into which the group was split in the hands of the same body of individual stockholders. Since there was no disapproval of this method of disintegration indicated in either opinion it would seem that the question whether or not common stockholding is 'repugnant to the law' * * * has been settled for this Court by controlling authority." [81]

The second objection of the independents was that it created a few dominating concerns. "The plan provides for a division (generally) among only three huge corporations of nearly all the properties now held by the trust. * * * The three or four concerns formed to carry forward the main business of the Tobacco Trust would together be in a position to crush the independents even more effectually than has been done in the past." [82] The relative position of the companies in the different branches is shown by the table below, which gives the distribution according to the percentage of volume.

The cigarette business of the trust, which was carried on in seven separate factories, was divided into three companies. The independents held that it should be divided among seven.

[81] 191 Fed. Rep. 375-6.
[82] Hearings, p. 316.

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Company	Cigarettes	Smoking	Plug	Fine Cut	Snuff	Cigars	Little Cigars
American	37.11	33.08	25.32	9.94	.....	6.06	15.43
Liggett & Myers	27.82	20.05	33.83	44.61	.....	.....	43.78
P. Lorillard	15.27	22.82	3.73	27.80	.....	5.72	33.84
R. J. Reynolds	.....	2.66	18.07	.....	.....	.....	.....
Union American	.....	.....	.....	.....	.....	1.58	.....
G. W. Helme	.....	.....	.....	.....	40.88	.....	.....
American Snuff	.....	.....	.....	.....	32.05	.....	.....
Bruton & Weyman	.....	.....	.....	.....	29.25	.....	.....
All Independents	19.80	21.39	19.05	20.65	7.82	86.64	6.95

They also charged that the distribution of the cigarette brands was such as to give the trust companies dominance in this branch of the trade. The smoking tobacco business of the trust, which was carried on in twelve separate factories, was divided among four concerns. The independents claimed that it should have been divided among twelve and they made the same charge of improper distribution of brands. The plug tobacco business of the trust, carried on in twelve factories, was divided among four companies whereas it should have been among twelve. The same charge as to distribution of brands was repeated. The little cigar business of the trust, carried on in seven separate factories, was divided among three concerns. It should have been divided among seven. The snuff business of the trust, carried on in more than three factories, was divided among three companies but should have been divided among six. The trust controlled 90 percent of the licorice-paste business which was divided among two companies. It should have been divided among four as there was only one independent competitor. It was also charged that "the control by the trust of the licorice-paste business gave it control of the chewing-tobacco business, as chewing plug cannot be made without licorice; and its control of the licorice-paste business of the whole country is fortified by its control of the raw material, licorice root. The plan makes no provision for breaking the trust's monopoly of licorice root." [83] The tin-foil business of the trust was divided between two plants

[83] Hearings, p. 318. These three companies controlling the trust business in this trade had all been found guilty of monopolizing licorice paste and fined in 1907. See 212 U. S. 585.

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while the independents wanted it divided among five separate companies.

To this second objection of the independents the Circuit Court said: "Manifestly the minuter the fragments into which the old combination is split, and the more they are prohibited from conducting business as other companies are free to conduct it, the less will be their ability to compete with such other companies. This whole line of argument deals with the economics of the tobacco business. No doubt the novel problem presented to this court is connected with questions of economics as well as with questions of law. But this is a court of law not a Commerce Commission, and the legal side of the proposition would seem to be the controlling one." [84]

The third objection to the plan was that the three companies among which the manufacturing properties of the trust were divided should be "each completely equipped for the conduct of a large tobacco business. No independent concern is now completely equipped for the conduct of a large tobacco business, or indeed completely equipped to do any tobacco business covering all the main branches of the tobacco trade." [85] The independents claimed that the impossibility of fair competition is due to the cumulative effect of three advantages which the trust secured through its illegal combination: (1) The large percentage of the business in each department which the trust companies received; (2) their business extends to all departments of the tobacco trade; (3) the control of indispensable brands by means of which the dealers would be compelled to give preference to its other products over those of the independents. These brands would also give large profits with which competitors could be crushed.

Fourth: [86] Many restraints on unfair competition were asked for by the independents, as well as by the Government, to make the dissolution more effective. Some of these were granted and the rest wholly or in part refused. The inde-

[84] 191 Fed. Rep. 376.
[85] Hearings, p. 319.
[86] Ibid., p. 320.

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pendents contended that for a limited time they should have more than ordinary protection. The request that the twenty-nine defendants be enjoined from increasing their holdings was granted for a period of three years but the special provision allowing the defendants to purchase each other's stocks made this less effective. The request for the liberty of applying to the court for relief in case of alleged violation of the injunctions was also denied. It may be noted that the following petitions supported by the Government were refused by the court: that no company established by the decree should have more than 40 percent of the output of any one branch; that the giving of rebates or other special inducements be prohibited; that espionage on the business of a competitor, bribery of employees of a competitor, or obtaining information from revenue officials be prohibited; that independents be allowed to appeal to the courts if the injunctions were violated; that the stock of the United Cigar Stores Company be sold to others than the twenty-nine defendants; that the Government be given the right to reopen the case within five years to obtain other relief in case the dissolution did not prove satisfactory.

Fifth: The decree left the United Cigar Stores Company intact and passed it over as a complete entity to the common stock holders of the American Tobacco Company.[87] The independents asked that this company growing up through the illegal operations of the trust be separated into ten separate corporations with separate group of owners for each. Its strong bond of union with the American and its illegal practices were a menace to the independent manufacturers and the retailers. The British-American and Reynolds Tobacco companies were likewise given wholly into the same hands.[88] Felix H. Levy, arguing for the independents, said, "The United Cigar Stores Company has been the most powerful agency of the combination in obtaining the control of the tobacco industry. Through the hundreds of stores which that company operates, and by virtue of the special trade advantages given to it by its owner, the American Tobacco

[87] Hearings, p. 321.
[88] Hearings, p. 349.

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Co., and by exercise of the most ruthless and cruel practices in driving out retail opposition and obstructing the avenues of distribution on the part of independent manufacturers, this company has proven the most effectual of all the barriers to the entry of others into the tobacco trade. If the mild expedient of merely separating this company from the combination but of leaving its control in the hands of the same men who have heretofore controlled the combination, if the rose-water remedy of gently setting aside this vast agency of destruction from its former control by the combination and placing it in the hands of the same men who control that combination, is to be adopted, it is no exaggeration to say that, in this respect at least, the decree of the Supreme Court of the United States might as well have been a blank piece of paper." [89] As to the United Cigar Stores Company, the Attorney General said, "there is one feature of this combination which, in my personal experience, has been the subject of more complaints than all the rest put together. That is the United Cigar Stores Company. The connection of that organization with this combination had given the combination the greatest opportunity to—I do not know that I can say to injure, but certainly to harass, the domestic trade and to incense a larger number of people than anything else they have done, because they have gone in and reached the poor corner dealer, bought the house over his head and when his lease came to an end, instead of his being able to renew it as formerly, he finds that he can not get a renewal of the lease, that it has been taken by the United Cigar Stores Co. It was the hand of the trust, it reached out and touched the little man who has nobody to protect him. I have on my files in Washington letters—my files are full of letters and complaints running down to within the last few days, and I do think if that concern can be cut loose,—it would do more to make the rest of the plan acceptable to the people of this country than anything else that could be done * * * , they are a great big organization to-day. They have something like a thousand stores, or seven hundred or eight hundred, at least, scattered

[89] Stevens, Industrial Combinations and Trusts, pp. 505-6.

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throughout the country, and they are the most potent competitor of the small dealer in the United States. * * *

"Therefore, I say, it is entirely within your honor's power, whether you choose to exercise it or not, to say as a condition of this plan: You have got to get rid of them and turn them loose so that that concern will no more have any connection with the American Tobacco Co., or with any of the distributive companies or with any of these individuals who have built up this combination through so many years." [90]

Many others have discussed the effectiveness of this dissolution. Mr. Roosevelt says it "practically leaves all the companies still substantially under the control of the twenty-nine original defendants. Such a result is lamentable from the standpoint of justice. The decision of the Circuit Court, if allowed to stand, means that the Tobacco trust has merely been obliged to change its clothes, that none of the real offenders have received any punishment, while, as the New York *Times*, a pro-trust paper, says, the Tobacco concerns in their new clothes, are in a position of 'ease and luxury' and 'immune from prosecution under the law.' Surely, miscarriage of justice is not too strong a term to apply to such a result when considered in connection with what the Supreme Court said of this Trust." [91] Attorney General Wickersham says the "plan, with the restrictive provisions embodied in the decree, will accomplish a recreation of lawful conditions, and being so convinced, I opposed the efforts of outsiders to inject themselves into the situation, and to delay or prevent the carrying out of the plan." [92] Samuel Untermyer characterized the dissolution as a "farce." [93]

Some results of this dissolution are known. When the order was given by the Supreme Court to dissolve the company, the stock of the American Tobacco Company fell to $390 per share; but after the decision of the Circuit Court as to the kind of disintegration which was to take place, this

[90] Stevens—Industrial Combinations and Trusts, pp. 483-4.
[91] Outlook, V. 99, p. 711.
[92] Hearst's Magazine, V. 21, p. 1439.
[93] Ibid., p. 1429.

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common stock rose, within a few weeks, to as high a price as ever attained in the history of the company, with the exception of a single day, $529 per share.[94] This was following four years of litigation which cost about $22,000,000 as claimed by the defendants.[95] Louis D. Brandeis, then chief counsel for the independents, now a member of the Supreme Court, declared that "a combination heretofore illegal has been legalized. The value of that legalization is shown by the high market value of the common stock * * *. At a time when the business of the country is depressed, when railroad shares and other industrial stocks are relatively low * * *. Surely other trusts would welcome such an 'immunity bath.'" [96] That the dissolution was a failure because the price of stock immediately rose does not necessarily follow. The stocks were somewhat depressed during the period of litigation and the fact that a surplus of more than $61,000,000 was accumulated in less than a decade in addition to large dividends gave rise to the hope of a freer distribution of earnings, even if in the aggregate the earnings were less in the future.

Much more definite evidence concerning the results of the dissolution are obtained from part 3 of the report of the Bureau of Corporations on the Tobacco Industry, published in 1915. This report deals with prices, costs and profits in the tobacco industry for the period of the combination and for the two years which followed the dissolution. The report shows that the successor companies among which the business of the combination was divided controlled of the total output in the various branches of the tobacco business in 1913, as compared with the combination in 1910, less in smoking and in fine-cut tobacco, more in cigarettes and in snuff, and about the same in plug and in little cigars.[97] There was in most branches a more equal distribution of business among the successor companies in 1912 and 1913 than there was directly after the dissolution. In the snuff branch each of the three successor companies retained prac-

[94] Hearings, Senate Interstate Commerce Committee, p. 1368.
[95] 191 Fed. Rep. 397. [96] Hearst's Magazine, V. 21, pp. 1440-1.
[97] Report of Bureau, Part III, p. 11.

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tically a monopoly in its respective types and to a large extent each a distinct sales territory.[98] This branch was also characterized by unusually high profits and small advertising and selling costs, with no apparent competition.[99] Aside from the cost of leaf tobacco which continued to rise rapidly in price, the report shows that the factory costs of the successor companies were not materially different from those of the combination in 1909-10, but that increases in selling costs after the dissolution were general, resulting from the duplication of selling organizations and increased overhead expenses following the division of the business. There was a marked increase in the advertising expenditure. In 1910 this item was $11,000,000 and in 1913 it was $23,000,000.[100]

The aggregate earnings of the successor companies in 1913 were slightly less than those of the combination in 1910, though the volume of sales was larger. The earnings on the book value of the investment of the successor companies averaged 12.5 percent in 1912 and 11.3 percent in 1913, but the profit accruing to the common stock was at a much higher rate.[101] Based upon the book value, the common stock of the following companies received in 1913 these respective earnings: the American 14.6 percent, Liggett and Myers 18.4 percent, Lorillard 17.6 percent, R. J. Reynolds 16.4 per cent. These rates would be much higher if the actual cost of the investment instead of the book value was taken. On this basis the earnings of the successor companies averaged 14.6 percent in 1913 as compared with 17.9 percent for the combination in 1908 and 17 percent in 1910.[102] The earnings of the successor companies were in general comparatively low in those branches or types in which competition for business was most pronounced, and very high in those in which competition was slight.

There have been no material changes in prices either to the jobbers or consumers since the dissolution. Of 110 prin-

[98] Report of Bureau, Part III, pp. 14-5.
[99] Ibid.
[100] Ibid., p. 18.
[101] Ibid., pp. 21-2.
[102] Ibid., p. 22.

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cipal brands covering nearly every branch of the trade, prices were changed for only three. The high profits taken in conjunction with the practically unchanged wholesale and retail prices indicate that there has been but little competition in price. The Bureau attributes this in large part to the customary retail prices and other peculiar price-making conditions of the tobacco trade, including statutory provisions, which make it impracticable in most cases to increase the quantity sold at the customary price.[103]

The position of the independents was not improved much by the dissolution.[104] Their total output remained about constant or slightly increased in the plug, smoking, fine cut, and little cigar branches, but declined heavily in the cigarette branch. The independents that increased their business were generally the larger companies producing a varied line of products, or small companies with some especially popular brand. On the whole their profits were small in comparison with the successor companies, as was true of the combination. They made a very poor showing of profits in the navy plug and Turkish cigarettes, but had a marked increase of profits in long-cut smoking tobacco, while in scrap tobacco their profits were even larger than those of the successor companies. This unfavorable showing of profits among the smaller companies has been attributed by the Bureau largely to the higher factory costs due to smaller scale operation and less efficient organization.

That the plan of dissolution for the tobacco trust was defective in some of its most important principles is shown by the trend of later dissolutions and antitrust legislation. It was more effective than the Oil dissolution which was almost a complete farce. The mere prohibition of interstock ownership was not deemed sufficient in this case. The business was reorganized and more restrictions placed upon the defendants, but the control was not divided so as to restore competitive conditions. The most serious defect was in the distribution of the stocks and securities. While the defendants lacked a direct majority vote after the dissolution, their

[103] Report of Bureau, Part III, pp. 23-4.
[104] Ibid., pp. 25-9.

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common interest in all the companies remained, and by a slight enlargement of the "community of interest" a small group could maintain a controlling interest in the industry. This was made the more probable and easy of accomplishment by granting to the defendants the privilege of exchanging their shares among themselves and thereby to perpetuate their control. The prohibition of common directors for a period of only five years was another defect, which, however, may be partly overcome by provisions of the Clayton Act. The control of the American Tobacco Company over the United Cigar Stores Company should have been released and the Government urgently plead for such a provision in the decree. The latter company whose stocks have a market value of about $34,000,000 is a powerful factor in the industry. The decree of dissolution was not framed by the court entrusted with the disintegration, and it is standing evidence, as is the Oil dissolution, of the lack of adaptation on the part of the courts for handling the complex administrative problems involved in concentrated industry. For this task men well trained in business affairs are a necessity and this was one of the objects in creating the Federal Trade Commission. No appeal was ever taken to determine whether the final dissolution decree of the tobacco combination had the approval of the Supreme Court.

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CHAPTER V

DECISIONS SINCE 1911

THE Standard Oil and American Tobacco decrees in 1911 marked a new epoch in the prosecution of trusts. The broader interpretation and wider application of the Sherman law, as given in those decisions, were soon applied to other trusts. The vigorous prosecution which followed resulted in more numerous applications of the trust laws. The more important applications will be considered in this chapter and the one following.

THE ELECTRIC LAMP COMBINATION [1]

In 1894 the patents on carbon filament lamps expired. This was the only incandescent lamp manufactured and sold on a commercial scale during the next decade. In 1896 the General Electric and six other companies formed the Incandescent Lamp Manufacturers Association for the purpose of fixing prices, allotting business, and prescribing regulations for the manufacture and sale of carbon lamps. Guarantee deposits were required of the members to insure observance of the rules, and penalties were provided for violations. During the following five years, ten other companies joined the combination, which also secured the cooperation of the Westinghouse Company.

In 1901 the National Electric Lamp Company was organized to combine the lamp interests. This company appeared to be separate from the General Electric Lamp Company, but a majority of its stock was held by the latter through a third party. The National Electric, with funds provided by the General Electric, acquired many competing

[1] Stevens, W. S., The Electric Lamp Combination, Quart. Jour. of Econ., V. 26, pp. 594 et seq.

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companies which had failed to join in 1901 or had arisen afterward. Agreements were secured also with the Westinghouse Electric Company and with seven other companies to observe the fixed prices on carbon lamps.

In 1906 the General Electric and National Electric companies secured from German interests the exclusive right to manufacture and sell in the United States and its possessions tantulum and tungsten filament lamps which had rapidly come into the foreground. Patents covering the latter were acquired in 1909. In this way, competition was forestalled in this country. The companies at once proceeded to monopolize the trade in carbon filament lamps upon which patents had expired. This was done largely through the jobbing trade. All jobbers and dealers were required to purchase all their carbon lamps from these companies in order to be permitted to purchase tantulum and tungsten lamps. The demand for these lamps forced the jobbers and dealers to carry them, and as a result the independent manufacturers of carbon lamps found they could not compete. Other contracts with makers of lamp machinery, tubes, bulbs, and bases, either to sell their products to the combination exclusively or to sell at fixed prices greatly strengthened the power of the combination. As a result the General Electric Company through its controlled companies, including those held by agreement, came to control 97 percent of the electric lamp business of the entire country.[2]

In 1911 a petition was filed against the General Electric Company charging a combination to restrain and monopolize the manufacture of incandescent electric lamps. Later in the year a consent decree was entered. The decree[3] ordered that the General Electric Company dissolve its subsidiary companies and thereafter conduct its busines under its own name. The decree also enjoined all license or contract agreements fixing prices and terms of sale; contracts with manufacturers of lamp machinery, bulbs, and tubing requiring sales exclusively to the defendants or demanding sale at prices lower than to competitors; making price dif-

[2] Stevens, Quart. Jour. of Econ., V. 26, p. 601.
[3] Trust Laws and Unfair Competition, 1916, pp. 480 ff.

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ferentials on lamps of the same quality and efficiency; compelling purchasers to buy carbon lamps as a condition of being able to purchase tungsten, tantulum and other lamps, or discriminating against any who refused to do so; offering lower rates to customers of competitors than were made in the established trade; using any patent to control the manufacture and sale of unpatented lamps.

The Dissolution of the Powder Trust

The powder trust was, with the exception of the Standard Oil, the oldest of the trusts dissolved. Its interesting history began in 1872 when seven of the largest manufacturers of powder and other explosives in the United States formed the Gunpowder Trade Association with the avowed purpose of regulating the price and terms for sale of explosives throughout the country.[4] The three most influential companies were the E. I. du Pont de Nemours and Company, the Hazard Powder Company, and the Laflin and Rand Powder Company. At the regular quarterly meetings of the association, or through a chosen committee of five members, the prices and terms of sale and the apportionment of trade and territory were determined upon for the members of the association who were bound to observe them under penalty of fines. Though the main agreement was changed from time to time this pooling combination retained a remarkable degree of effective control for the next thirty years before a more permanent organization was secured.

In 1875, the combination began a ruinous price cutting campaign in the western states for the purpose of securing control of the California Powder Works Company, and as a result the California company was soon forced to sell almost half of its stock and agree to limit its sales to a stipulated territory.[5] Local price cutting was authorized by the association in order to drive competitors out of the markets

[4] Pleadings, Briefs, and Exhibits in the suit of U. S. vs. E. I. du Pont de Nemours and Company in the U. S. C. C. for the District of Delaware, No. 280. In equity; Stevens, W. S., The Powder Trust, Quart. Jour. of Econ., V. 26, pp. 444-481; 188 Fed. Rep. 127-153.

[5] Amended Petition Pleadings, pp. 16-20.

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or to force them to come into the association. It was one of the chief, if not the chief, means used by the powder combination to eliminate competition for nearly forty years.[6] Sometimes the losses resulting from price cutting were apportioned among the members. Several less important companies were induced to join the association in 1876.

Between 1878 and 1881, three new independent companies entered the gunpowder trade. In the demoralizing competition that followed (1880-5) the association sold its explosives far below cost in the territories of the three companies. Rifle powder was sold as low as $2.25 per keg although in other places it was sold at $6.25.[7] The price of blasting powder fell from $2.75 to $.80 per keg in the contested regions.[8] As a result all three companies were forced to join the new Association Agreement of 1886; twelve companies in all accepted the agreement. Within the next six months prices of explosives practically reached the level existing prior to the formation of the new companies. In addition to the fundamental agreement of 1886 between the twelve companies, five supplementary agreements were soon entered into with other companies for the purpose of enforcing the regulations and prices of the association.

The agreement of 1886 expired in 1889 and was immediately followed by another almost identical.[9] The United States as before was divided into seven districts. A "Board of Trade" made up of five members was given power to fix and alter prices and to settle grievances. The total sales were divided among the companies in direct proportion to the yearly allotments of each. Losses due to authorized local price cutting were to be compensated by the payment of money. The agreement included companies controlling 95 percent of the output of rifle powder and 90 percent of blasting powder.[10] Thus, the first period of the powder trust witnessed an effective combination of the gunpowder trade. The chief means of attaining this control were ruinous local price cutting and restrictive agreements.

During the second period of the powder trust ending in

[6] Amended Petition Pleadings, p. 90.
[7] Ibid., p. 29.
[8] Ibid.
[9] Stevens, Quart. Jour. of Econ., V. 23, p. 453.
[10] Ibid.

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1902, the dynamite trade was fully consolidated and closer relations established between members of the association.[11] Following the agreement of 1889, the prices of powder were raised and this brought three new concerns into the gunpowder trade. The association started a vicious underselling campaign against them. At Ooltewah, Tennessee, where one of the new companies was located, the railroad agent was paid monthly for furnishing a weekly statement of the powder shipments made by this company, giving the name of the consignee, number of kegs and the destination.[12] By 1896 all three companies had passed under the control of the association and in the same year the association slightly revised and renewed its agreement to which seventeen companies, exclusive of the California Powder Works, subscribed.[13]

Following the agreement of 1896 prices of powder were again advanced and again new competitors arose.[14] Four new independents were organized prior to 1902.[15] Each of these found itself at once in destructive competition with the combination which sold powder in the contested fields as low as $.70 per keg.[16] Two of the companies soon yielded to the combination, while the other two sold out in 1902, the leaders of the companies agreeing to keep out of the business for a period of twenty years. A number of other agreements were entered into between 1896 and 1902. Several of these were to keep certain individuals out of the powder business. In one the King Powder Company agreed to sell most of its output to the combination for a period of twenty-five years. With the aid of the above agreements and acquisitions the combination practically eliminated competition in the blasting and the sporting powder trade.

The association secured control of the dynamite trade during the second period.[17] It became evident that dyna-

[11] Stevens, Quart. Jour. of Econ., V. 23, pp. 453-469.
[12] Ibid., p. 455.
[13] Ibid., p. 457.
[14] Ibid.
[15] Ibid., p. 458.
[16] Ibid.
[17] Ibid., pp. 462-9.

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mite would be a strong competitor of blasting powder. The du Pont and Laflin and Rand interests had entered the dynamate business about 1879. They organized two new companies and acquired stock interests in a third. In 1895 the three companies were taken over through the exchange of stock by the Eastern Dynamite Company, a New Jersey holding company, organized for this purpose with a capital stock of $2,000,000, of which the du Pont and Laflin and Rand interests held a majority control. In the same year the Eastern Dynamite Company entered into an agreement with the Aetna Powder Company providing for a division of the dynamite trade between the two companies and their subsidiaries based upon the amount of business done by each during the previous year. Each company agreed not to cut prices under pain of heavy penalties and to pay two cents per pound to the other on all sales exceeding its allotment. A board of five was to adjust the business proportionally. During the first three years following this agreement the Eastern company acquired seven or more companies and increased its proportion of sales accordingly.

In 1897, foreign manufacturers of powder and explosives began to construct factories in New Jersey. The powder combination quickly sent representatives to Europe who negotiated the "European Agreement." [18] By the terms of the agreement no explosive factories were to be built by Americans in Europe or by the Europeans in America. Those under construction in New Jersey were to be taken over by American companies. As for black powder and smokeless sporting powder each party could ship these into the territory of the other. The agreement also provided that European factories were bound not to sell or quote prices of explosives to the Government of the United States lower than those fixed by the American factories. Likewise, the American factories were bound not to sell or quote prices of explosives to foreign governments lower than those fixed by the European factories. The world was divided into four districts for the sale of high explosives. The United States,

[18] Petitioner's Record Exhibits, V. 2, pp. 1123-1132; Stevens, Quart. Jour. of Econ., V. 23, pp. 465-7.

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Mexico, parts of Central America and a small part of South America constituted exclusive American territory. All the rest of South America and the islands of the Caribbean Sea, not Spanish possessions, was designated as syndicate territory in which the minimum selling prices were to be jointly regulated. The difference between the fixed price and the price obtained was to constitute syndicate profit and be divided equally. Canada and the Spanish possessions in the Caribbean constituted open territory. The rest of the world was exclusively reserved for the European factories. Provisions for supervision, settling differences, and penalties for violations were included in the agreement, which was to continue for a period of ten years.

In 1898 a "Mexican Agreement" was arranged providing for fixed schedules of prices in Mexico which were to be jointly observed. To avoid the competition of the Hancock Chemical Company in Mexico, the privilege of acting as the exclusive sales agent of this company was purchased. Thus by the end of the second period (1902) competition was practically eliminated in the dynamite trade as well as in the gunpowder. The control of the combination became further strengthened by numerous agreements both foreign and domestic.

The third period of this history, extending from 1902 to 1912, was characterized by an increasing concentration of control under a corporate form of organization.[19] Eugene du Pont, who was the active manager of the E. I. du Pont de Nemours and Company, the most influential company of the combination, died in 1902. None of the other stockholders being willing to assume the management, Alfred du Pont asked the cooperation of Pierre S. and Thomas C. du Pont who had not previously held any interests in the business. The three Du Ponts organized the E. I. du Pont de Nemours Company of Delaware in 1902. The company, having an authorized capital stock of $20,000,000, issued $11,997,000. Of this amount the three du Ponts received $8,940,000 as promoters' profit.[20] The balance of the

[19] Stevens, Quart. Jour. of Econ., V. 23, pp. 469-80.
[20] Ibid., p. 470.

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$11,997,000, together with $12,000,000 in notes, was given in exchange for the assets of the old combination. The Delaware company of 1902, in order to remain purely a holding company, transferred its plant assets to two operating companies, which were organized for this purpose, in return for their securities. The most important of these operating companies was the E. I. du Pont de Nemours and Company of Pennsylvania. At this time the company of 1902 controlled no dynamite plants. It had minority holdings in fifteen concerns, a majority holding in a sixteenth, a fifty percent in a seventeenth, and owned all of the Hazard Powder Company which in turn had minority holdings in six companies.[21] The Laflin and Rand interests had minority holdings in thirteen, fifty percent in two, and a majority in two companies.

The Delaware Company of 1902 soon after its organization secured an option on a majority of the Laflin and Rand stock and organized the Delaware Securities Company to take over the property.[22] The purchase price was about $4,000,000 in bonds and a stock bonus of 20 percent. In like manner the Delaware Investment Company was organized to acquire about 32 percent of the stock of the Moosic Powder Company which was held by stockholders of the Laflin and Rand Company. The exchange price of this stock was about $2,350,000 in bonds and a stock bonus of 25 percent. These transactions gave the Delaware company complete control of all the companies in the combination except ten.[23] Of these ten it held minority control in three, and five were more or less completely controlled by one or more agreements. The transactions were immediately followed by an advance in prices.

The Delaware company of 1902 continued to acquire other stocks. Within ten months it acquired from 25 to 75 percent of the stock in five companies in which it had no previous holdings, besides additional purchases in the stocks of its own subsidiaries.[24] Full control succeeded partial

[21] Stevens, Quart. Jour. of Econ., V. 23, p. 471.
[22] Ibid., pp. 472-3.
[23] Ibid.
[24] Ibid., p. 475.

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control in three companies operating in Pennsylvania, including the Moosic Powder Company.

In order to aid the combination in concentrating its power and fastening its hold upon the monopoly it had so steadily built up, another parent holding company was organized in 1903. This was the E. I. du Pont de Nemours Powder Company of New Jersey with a capital stock of $50,000,000 divided equally between common and preferred. The Delaware company of 1902 transferred to the New Jersey company all its stock holdings in other companies, together with its own stock, in exchange for $30,200,000 of stock, including a majority of each kind, of the New Jersey company.[25] The policy of acquiring competitors was pursued more vigorously than ever. Local price cutting which had been the chief weapon of the combination from the first was continuously practiced.[26] Control of the California Powder Works was made complete, and the California Investment Company was organized to take over practically all the stock of the Judson Dynamite and Powder Company. This left only three companies of the old combination. In the following year these three also entered into an agreement for one year, but two did not renew the agreement.

Control of several other important companies was secured before the close of 1903.[27] One of these was the Metropolitan Powder Company; another was the E. C. Schultze Gunpowder Company, an English corporation operating in New Jersey. The International Smokeless Powder and Chemical Company, which was a large producer of smokeless powder used by the Government, was also acquired through the International Powder Company of Wilmington, Delaware, which was organized for this purpose with $10,000,000 of stock. A large part of the stock and $1,000,000 of bonds were given for a controlling interest in the former company. A complete control of the Ohio Powder Company was secured in 1904. The Monarch Powder Company was acquired the following year, and by 1906 a 66 percent

[25] 188 Fed. Rep. 144.
[26] Amended Petition, Pleadings, p. 90.
[27] Ibid., pp. 71-85.

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control of the California Vigorite Powder Company had been obtained. The latter was an important competitor of the combination.

In addition to the more important acquisitions already noted there were many of less importance. Up to the middle of 1907, the du Pont de Nemours company of 1903 and the Eastern Dynamite Company had acquired the stocks of more than one hundred companies.[28] The advance of prices in 1902 had been followed by another a few years later, and since the manufacture of powder did not require a large amount of capital new competitors were soon attracted to the trade. Local price cutting was practiced wherever competitors sought a foot-hold. Prices varied widely between different sections of the country showing a policy of charging what the traffic would bear.[29] Losses in competitive territory were more than offset by large profits in non-competitive, although potential competition exerted a more powerful restraining influence than in the case of the Standard Oil Company. The control of the combination over sales was made more effective under corporate management.[30] A sales board superseded the committee plan of fixing prices and terms of sale. The country was divided into districts and assistant sales directors under the supervision of the sales board traveled about in each. During the 18 months preceding December, 1907, the sales directors were given power to meet the prices of competitors. During this time the competitors who were not eliminated were greatly worried. The campaign appeared to be a preliminary step to an advance in prices which was authorized by the sales board at the end of the period. With the advance came the first published schedule of prices. Except in case of large contracts there was little departure from the list prices and price cutting was largely discontinued. Perhaps the Government's suit which was filed against the combination in 1907 exerted some influence.

In addition to the frequent advances of price and the power to practice price discrimination, the extent of mo-

[28] Petitioner's Record, Exhibits, pp. 2744-7.
[29] Amended Petition, Pleadings, pp. 90-1.
[30] Brief for the United States, V. 2, pp. 294-7.

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nopoly control may be shown in part by the percentage of each branch of the trade controlled by the E. I. du Pont de Nemours Powder Company from 1905-8:[31]

	1905	1906	1907	1908
Black blasting powder.....	64.6	63.4	64.0	
Saltpeter blasting powder..	80.0	69.5	72.0	
Dynamite.....	72.5	73.0	71.5	Substantially
Black sporting powder.....	75.4	72.6	73.6	the same[32]
Smokeless sporting powder.	70.5	61.3	64.0	
Government ordnance.....	100.0	100.0	100.0	

The foregoing figures do not include the sales of a number of companies which were more or less controlled by the parent company through minority stock holdings.[33] Neither do the figures include the sales of several large companies, such as the Aetna Powder Company, which did not compete with the combination.[34]

In 1904, the combination began to dissolve the various subsidiary operating companies controlled by it. During the next few years about seventy corporations engaged in the manufacture of explosives passed out of existence. The object of this policy was to concentrate the explosive business of the country. The property and assets of the dissolved companies were transferred to the larger companies in the combination. It was intended, as soon as possible, to discontinue some of the larger companies. The action of the government perhaps prevented further concentration.

Likewise, the profits of the New Jersey holding company are indicative of monopoly control and its abuse.[35] From the time the company was organized in 1903 to the end of 1909, it had paid out in cash dividends about $11,000,000 and had a surplus of between $12,000,000 and $13,000,000.[36] The Delaware company of 1902, whose original investment amounted to $3,000, owned much over half of the stock of the

[31] Brief for the United States, V. 2, pp. 330-4.
[32] Ibid., p. 334.
[33] Ibid., p. 334.
[34] Ibid.
[35] Ibid., pp. 334-5.
[36] Ibid.

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New Jersey company and received considerably more than half of the profits.[37]

In 1907 the Government filed dissolution proceedings against the du Pont company of 1903 and in 1911 the Circuit Court held that fourteen corporations and fourteen individual defendants were maintaining an unlawful combination to restrain trade in the manufacture and sale of gunpowder and other explosives.[38] An interlocutory decree granted to both the petitioner and defendants a court hearing at which a plan of dissolution would be agreed upon. Either side could submit their own plan or plans, but any such plans must not deprive the defendants of the opportunity to recreate a new condition in harmony with the law. In June 1912 the court filed its final decree. It ordered the dissolution of the combination consisting of twelve corporations and fifteen individual defendants. Of the latter, ten were du Ponts by name.

The decree ordered the properties of the following companies to be distributed among their stockholders: Hazard Powder Company, Delaware Securities Company, Judson Dynamite and Powder Company, Delaware Investment Company, California Investment Company, and, unless as later provided for, Laflin and Rand Powder Company, and Eastern Dynamite Company. All, or a majority of the stocks of each of the above corporations was owned by the du Pont Company of 1903. The du Pont Company of 1902 which owned the stock of the du Pont Company of 1903 was ordered to be dissolved, its property being distributed among its stockholders.

The property and business still remaining with the du Pont Company of 1903 were ordered to be shared with two new corporations, with two alternatives. The Laflin and Rand and the Eastern Dynamite companies might be reorganized and utilized instead of the two new corporations, or either of the former could be used for one of the latter. The defendants chose to organize two new corporations, the

[37] Brief for the United States, V. 2, pp. 334-5.
[38] 188 Fed. Rep. 156.

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Hercules and the Atlas powder companies. To the first were assigned three plants for the manufacture of dynamite, seven plants for the manufacture of blasting powder, and two plants for the manufacture of black sporting powder. To the second were allotted four plants for the manufacture of dynamite and five plants for the manufacture of black blasting powder. The distribution left the du Pont Company of 1903 eight plants producing dynamite, seven plants for the manufacture of black blasting powder, two plants for the manufacture of black sporting powder, and also two plants for the manufacture of government smokeless powder. A partial division of the smokeless sporting powder business was made by requiring that a plant located at some eastern point, with a capacity of 950,000 pounds per annum be transferred or furnished to the first of the new corporations organized. The du Pont company was left the sole contractor for government smokeless powder as the court maintained that a division among several competing companies would tend to destroy the practical and scientific co-operation between the Government and the defendant company, and to impair the certainty and efficiency of the results thus obtained. It may be noted that the Government by ownership and operation of its own plants is enabled to control the price it pays for powder.

The method of handling the securities of the new corporations was much different than in the analogous case of the American Tobacco Company. The new corporations were required to pay for the properties, brands, good will and business transferred to them by issues of bonds and stocks. Fifty percent of the purchase price consisted of income bonds bearing six percent interest that was payable if earned by the company during the year, or to the extent thereof earned but not otherwise. The bonds were to be paid within ten years. The other half of the purchase price was the total stock issue of the two new corporations. All the stock and half of the bonds were ordered distributed among the stockholders of the du Pont Company of 1903. Such of the stocks as were due to any of the twenty-seven defendants were ordered to be one-half voting and the other

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half non-voting stock. Upon transfer by death or will to some person not one of the defendants, non-voting stock could be exchanged for voting stock. This privilege of exchange was extended to any purchaser of non-voting stock provided that the purchaser was not a defendant or the wife or child of one.

The decree ordered that as far as practicable a fair proportion of the explosive business should be transferred to the new corporations. The new corporations were granted for a period of five years free access to the records of the Trade Bureau of the trust, and also to such facilities as the du Pont Company may possess in reference to the purchase of materials, experimentation, and scientific research.

The defendants and the new companies were enjoined from: (1) uniting in any way the businesses of the new concerns with their own or vice versa, or placing the stocks of either in the hands of a voting trust; (2) making any agreement or arrangement relative to prices or apportioning trade by either customers or localities; (3) using local price cutting to eliminate competition, except that prices may be lowered to meet or compete with those of rival manufacturers. (This was one of the leading weapons of the trust); (4) retaining either the same clerical force or the same office; (5) operating bogus independents, all subsidiary concerns being required to place their names upon their products and to give a statement indicating their control. The three corporations were further enjoined for a period of five years from: (1) having an officer or director who also holds such an office in either of the other corporations; (2) having the same sales agent as another, though they may sell through the same merchant or dealer; (3) acquiring the stock, factories, plants, brands, or business of any other.

For three years, the individual defendants were forbidden to increase their stock or other interests in the new companies, although they could acquire the interests of other defendants. A number of agreements entered into by the defendants were ordered annulled. Six months were allowed to put in force the terms of the decree; that is, until December 15, 1911. The court retained its jurisdiction of the case

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and ordered that a report be made for its approval after the plan had been carried out.

After a consideration of the history of the powder trust and its dissolution, W. S. Stevens declares that the "effect of the dissolution is difficult to predict. The distribution of plants in order to insure competition promises well. In the transfer of securities the theory has been apparently to divide the strong stock control of the du Ponts by returning half the purchase price of the plants transferred in an income bond. The du Ponts' interest after this process is again split in half by the distribution to the twenty-seven defendants of half their stock in a non-voting issue. Regarding this latter provision it is to be borne in mind that by sale to other than the defendants or their wives and children such non-voting stock becomes exchangeable for voting stock. This clause is pregnant with suggestions of dummy vandies. It is very questionable if the division into voting and non-voting stock as it stands gives any real safeguard. Had the court forbidden the exchange of the non-voting stock for voting stock for a period of five years or more this provision would have been more satisfactory. As in the Tobacco dissolution which contains the same clause, the provision against the acquisition for a period of three years by defendants of further interests in the new companies than those assigned, is open to serious criticism. The result after three years no one can foretell. It may be pointed out further that the clause forbidding local price cutting contains one exception that makes it of no value if by chance an independent manufacturer cuts the price first. As the clause now stands that act would apparently justify a trade war." [39]

In conclusion it may be said that the injunctions laid upon the defendants and the three corporations were very similar to those of the tobacco dissolution and are to that extent subject to nearly all of the objections raised against that plan.[40] It was nearly two years after the combination

[39] Stevens, Quart. Jour. of Econ., V. 27, pp. 206-7.
[40] See pp. 134-40.

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was declared illegal before the dissolution was effected.[41] The practical effects of the dissolution cannot be analyzed, for soon after it was completed an unprecedented demand for powder and other explosives arose on the part of European nations. The profits of the companies have been enormous and their capacity and capitalization have been greatly increased. Many new concerns have entered the industry and no doubt depressed conditions due to an enlarged capacity will attend the return of a normal demand.

The Dissolution of the Union Pacific Railroad Company

The main line of the Union Pacific Railroad Company extends from Council Bluffs, Iowa, to Ogden, Utah. From Ogden, the Union Pacific has a line extending in a northwesterly direction to the coast at Portland through control of the Oregon Short Line and the Oregon Railroad and Navigation Company. At Portland it has steamboat connection with San Francisco. This was a much longer route to the coast than from Ogden directly to San Francisco over the Central Pacific, a distance of 800 miles. The Central Pacific was owned by a strong rival system, the Southern Pacific Railroad, and much of the Union Pacific's through trade had to be turned over to its competitor at Ogden.

The Union Pacific tried repeatedly to avoid its "bottled up" position at Ogden by purchasing the Central Pacific Railroad, but without success. Finally in 1901-2, the Union Pacific secured control of the Central Pacific indirectly by purchasing a controlling interest in the Southern Pacific system, which consisted of about 3,500 miles of ocean and river lines and over 8,000 miles of railroad lines, forming a transportation system from New York and other Atlantic ports to San Francisco and other Pacific ports, with various branches and connections, besides several important steamship lines.[42] The stock purchased, which was held by a proprietary company of the Union Pacific, the Oregon Short

[41] Moody's Manual, 1916.
[42] 226 U. S. 93.

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Line, amounted to 46 percent of the total stock of the Southern Pacific Railroad. While this was less than a majority of the stock, Mr. Harriman, who dominated the Union Pacific, frankly admitted that it gave him control of the Southern Pacific.[43] After the purchase Mr. Harriman became President and Chairman of the Executive Committee of the Southern Pacific Company with the same ample powers which he had in a like position in the Union Pacific.

The Government brought suit under the Sherman Act against the Union Pacific, charging that the acquisition of the Southern Pacific stock was illegal. The Circuit Court dismissed the charge upon the ground that the Union Pacific and Southern Pacific were connecting, and only incidentally, competing lines. The case was appealed to the Supreme Court which rendered a decision late in 1912. This Court declared that the purchase of the stock of the Southern Pacific constituted an unlawful combination in restraint of trade. It allowed the Government and defendants three months to work out a plan of dissolution agreeable to the Circuit Court. In the meanwhile, the Union Pacific was enjoined from exercising control, voting, or paying dividends on the stock while in its possession, or in the possession of a subsidiary company, or held by a corporation or person for the Union Pacific.[44]

Soon after the decree was given, both the Government and the defendants joined in asking the Supreme Court to instruct the Circuit Court whether a pro rata sale or distribution of the Southern Pacific stocks to the shareholders of the Union Pacific Railroad, as was done in the Northern Securities and Standard Oil dissolutions, would meet the requirements of the Supreme Court.[45] The appellees urged that such a dissolution would end the consolidation, especially since the Union Pacific had outstanding $316,215,600 of stock and $37,000,000 of convertible bonds, and since these securities were distributed among 22,150 stockhold-

[43] 226 U. S. 95-6.
[44] 226 U. S. 96-7.
[45] 226 U. S. 470-7

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ers.[46] The Supreme Court refused this proposed plan, maintaining that it would not end the combination. The Court declared that it would not be bound by the former precedents saying that "each case under the Sherman Act must stand upon its own facts, and we are unable to regard the decrees in the Northern Securities Company case and the Standard Oil Company case as precedents to be followed now, in view of the different situation presented for consideration." [47] No credence was given to the alleged wide distribution of stock ownership. While the Union Pacific had 22,150 stockholders, the Chief Justice pointed out the fact that 68 stockholders owned 44 percent of the stock, and 300 others owned 18.8 percent.[48] Thus, 368 persons controlled 62.8 percent of all the stock of the company, so that consolidation might easily be perpetuated through the activity of the large stockholders.

Much difficulty was experienced in arriving at an agreeable plan of dissolution. Upon the refusal of the first plan, a second one was tried.[49] It proposed: first, a sale of Southern Pacific stock, under privileged conditions, to all shareholders both of the Union Pacific and Southern Pacific companies, except the Union Pacific or the Oregon Short Line companies; and secondly, with the funds thus acquired, an outright purchase by the Union Pacific from the Southern Pacific of the Central Pacific link. This plan also failed. Conflicting stipulations in the bond issue, and the almost hopeless physical entanglement of the two properties hindered the carrying out of the plan. But the chief objection came from the aroused public sentiment of California, which through its railroad commission insisted upon the continuance of actual competition at all points. Thus the Union Pacific lost the long coveted short line to the coast.

A third plan [50] proposed a pro rata distribution of the Southern Pacific stock among the shareholders of the Union Pacific, but such a disposition was to be coupled with dis-

[46] 226 U. S. 472, 476.
[47] 226 U. S. 474.
[48] 226 U. S. 476.
[49] Ripley, Railroads, Finance and Organization, pp. 566-7.
[50] Ibid., pp. 566-7.

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franchisement for all purposes of control, of all holders of 1,000 shares or over. A trustee was to issue certificates of interest upon deposit of all Southern Pacific shares held by the Union Pacific, which were to carry no voting rights while so held, and which should be exchangeable for actual Southern Pacific shares only on affidavit that the applicant for exchange held less than 1,000 shares. This plan would exclude 368 private shareholders from further increasing their holdings and in so doing was held to be of doubtful legality, and hence was rejected.

The plan finally adopted required the Union Pacific to dispose of its 46 percent of the Southern Pacific stock, amounting to $126,650,000 par value.[51] Of this amount $38,292,400 was exchanged with the Pennsylvania Railroad for stocks of the Baltimore and Ohio Railroad, a competing line of the former railroad. This was an attempt at a double dissolution of two railroads, by substituting in each case control or at least a dominant interest in a competing line for the interest of merely a connecting line. The stocks of the Baltimore and Ohio acquired by the Union Pacific were distributed as a dividend among its shareholders. This still left the Union Pacific with a balance of $88,357,600 of Southern Pacific stock which was distributed among the other general shareholders of the Union Pacific limiting the amount received by any one shareholder to 27 percent of his individual holdings. In restoring these stocks, the expedient of issuance of certificates of interest by a trustee to be exchanged for actual stock upon affidavit that purchase was made in good faith on his own behalf, independent of the Union Pacific interests, was borrowed from the preceding plan.

The plan of dissolution left the Central Pacific in the possession of the Southern Pacific, a feature of the dissolution held to be essential by the Taft administration. The Harriman interests always held the right to possession of the Central Pacific under the Acts of Congress of 1862-64, which aimed to encourage by liberal land grants and subsidies the construction of the first transcontinental railroad,

[51] Ripley, Railroads, Finance and Organization, pp. 566-7.

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and which provided that "the whole line of said railroad * * * shall be operated and used for all purposes of communication * * * so far as the public and Government are concerned, as one connected continuous line." [52] A reconsideration of this claim led to the institution of another suit in 1914 by the Department of Justice. This time it was to compel the Southern Pacific to terminate its control of the Central Pacific.[53] The Government contended that such a change would promote the public interest, especially for California and the Pacific slope, by giving a direct continuous transcontinental line that could freely compete and bind more closely the East and West. Certain California shippers had opposed such an arrangement at the time of dissolution.

The dissolution of the Union Pacific marked a decided advance over the previous dissolutions. The corporation adjudged illegal was denied the privilege of retaining any stock or ownership in the properties illegally joined. No controlling interest in the Southern Pacific was allowed among the shareholders of the defendant corporation. The proportion of Southern Pacific stock received by the latter shareholders was distributed in proportion to their individual holdings and then only upon affidavit of no intent to unite with the Union Pacific interests. The adoption of such a policy had been far more urgent in previous dissolutions. The Union Pacific had a far better justification for its combination. It had been charged with neither unfair methods nor the extortion of excessive prices, such as had usually characterized the corporations previously dissolved. Had such measures forbidding large stock ownership been adopted in the Standard Oil and American Tobacco Company dissolutions, better results would have followed.

The Anthracite Coal Combination

A study of the anthracite coal combination and of the efforts made to break its power brings an added realization

[52] Ripley, Railroad Finance and Organization, p. 569.
[53] Ibid.

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of the complexity of the trust problem which presses upon the courts and law-making assemblies for solution. An extended study of this combination, both as to its history and present legal position, has recently been made by Dr. Eliot Jones in "The Anthracite Coal Combination in the United States." [54] This work furnished much of the data for the following pages.

The geographical location of the anthracite coal industry of the United States is such as to invite concerted action and make easy of accomplishment any attempt to dominate the supply of coal and the control of prices of this commodity. Control would give a monopoly of a natural resource whose annual production is about 75,000,000 tons. The monopoly position would be further fortified by the fact that there is practically no foreign competition. The hard coal deposits of our country are localized to a remarkable degree. Five adjoining counties in the northeastern part of the State of Pennsylvania produced 96 percent of the total output of the country.[55] The 484 square miles of workable beds lie in a broken and mountainous region one hundred and fifty to two hundred and fifty miles from tide water. The commercial value of the coal is dependent to a large degree upon quick and cheap transportation to the tide-water points, whence it is shipped to the consuming markets.

From early days, the State of Pennsylvania attempted to help the anthracite coal industry to overcome its transportation difficulties. Railroads were given power to acquire coal lands and engage in the business of mining and selling coal and to assist coal companies by purchasing their stocks and bonds.[56] These opportunities were rapidly seized and by 1875 most of the coal lands were in the hands of the railroads. The bad results arising from the union of transportation and mining privileges led in 1874 to the passage of a state constitutional amendment which forbade common car-

[54] Harvard Economic Studies, V. XI, 1914, hereafter referred to as Jones. Other sources are: 164 Fed. Rep. 217-54; 183 Fed. Rep. 427-497; 213 U. S. 366-419; 226 U. S. 324-373; 213 Fed. Rep. 240; 238 U. S. 516; 226 Fed. Rep. 229.

[55] Jones, p. 5.

[56] 226 U. S. 339; Jones, p. 27.

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riers to mine or manufacture, directly or indirectly, articles or commodities for transportation over their own lines, but the law was too late to save the independence of the coal industry.

The large annual interest charges resulting from the purchase of the coal lands and from the seasonal demand for hard coal, which is used almost exclusively for domestic purposes, gave the railroads a strong incentive to seek pooling devices to prevent cutting of prices. Between 1873 and 1898 the railroads entered into various combinations to control through restrictive policies the production and price of coal.[57] These agreements were usually of short duration, being followed by periods of keen competition and increased production. The large indebtedness of the railroads made them eager to exceed their annual allotments agreed to by the combination. When pooling was made illegal in 1887 reliance was placed largely upon the leasing of competing railroads. The leased roads were guaranteed an interest rate plus a division of the profits earned above this rate. The operation of the leasing arrangement through the Reading Company, which in 1892 had 70 percent of the anthracite shipments under its control, was secured through interlocking directorates among the roads and through seven year contracts with independent mine operators. The latter agreed to accept for their production of coal 60 percent of the tide-water price. None of these arrangements were successful for more than a short period, partly because of the changing financial conditions of the country.

With the period of rising prices beginning about 1897, more effective methods of restraining competition in the anthracite industry were secured through extensive consolidation. The first step in this direction was made by the consolidation of railroads competing in anthracite transportation.[58] In 1898, the Erie Railroad purchased a complete controlling interest in the New York, Susquehanna and Western Railroad. The Reading Company, through its purchase of the Central Railroad of New Jersey, obtained nearly one-

[57] Jones, pp. 40-58.
[58] Ibid., pp. 59-67.

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third of the total coal shipments. The New York, New Haven and Hartford and the Lehigh Coal and Navigation Company each secured through purchase or through inter-directorate arrangements the control of several competing lines. A second step in securing an effective combination of the anthracite interests was made by developing a community of interest among the railroads.[59] This was brought about through the inter-ownership of stocks and through inter-locking directorates with other railroad systems. The unity of action was sufficient by 1901 to restrain the competition and to command control of the situation. The third and final step in the consolidation plan was the practical elimination of the independent operators.[60] This was effected either through purchase or by means of percentage contracts. Many of the seven year percentage contracts with the independents expired about 1899, and the independents, claiming that 60 percent of the tide-water price was not enough, planned to build an independent railroad for their coal shipments. The building of a new road was started, but the combination railroads through the instrumentality of the Temple Iron Company purchased enough of the mines of the independents to prevent the construction of the line. A second attempt of the independents to build their own line was also crushed, but as a result of this effort, the independents secured an increase to 65 percent of the tide-water price in their contracts.[61] But it is important to note that these contracts, instead of being for a short period, were for the most part perpetual. Thus most of the independents not purchased either directly or indirectly were eliminated by means of the perpetual percentage contracts.

The Temple Iron Company,[62] organized in 1873, had just prior to the time of the above purchases, in 1899, a capitalization of $240,000 and employed from 100 to 200 men. Its capital stock was increased to $2,500,000 and a bond issue of $3,500,000 was made. Mr. Baer, president of the Reading Railroad Company, was formerly president of

[59] Jones, pp. 67-73.
[60] Ibid., pp. 73-97.
[61] Ibid., pp. 87-97.
[62] Ibid., pp. 76 ff; 151-5.

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the Temple Iron Company for several years prior to 1899, and he remained president of the company almost continuously after that year. He was very familiar with the broad charter privileges of the company for he had aided in drawing up the articles of incorporation and the practical control of the company rested with him. The directors of the company included the presidents of the combining railroads and some personal friends of Mr. Baer. Although its capitalization was not large, relatively, the company through the men and the interests brought together formed the medium for the understandings that gave unity of action in the anthracite coal industry. In 1912 the Supreme Court declared that the company's "board of directors * * * supplies time, place, and occasion for the expression of plans or combinations requiring or inviting concert of action." [63] The debts of the company, through which the purchases and percentage contracts were made, were guaranteed by the supporting railroads.

The combination in 1907 controlled 91.3 percent of the total production of hard coal even though the independents mined 22 percent of the total.[64] The report of the State Department of Mines shows that the independents in 1911, as in 1907, mined and controlled less than one-tenth of the total output while the railroad companies mined and controlled over nine-tenths.[65] Of the unmined coal the railroad companies owned in 1896, 90.9 percent, and if the future tonnage controlled by them through contracts be included they owned and controlled 96.3 percent, leaving only 3.7 percent of the future available tonnage in private hands.[66] Mr. Jones believes that since the independents in 1907 owned less than 9 percent of the unmined tonnage and produced nearly 22 percent of the total output, that the independents will be eliminated in the comparatively near future unless new conditions are secured through effective legislation.[67]

The transportation rates on anthracite coal were also

[63] 226 U. S. 353.
[64] Jones, p. 107; 226 U. S. 339.
[65] Jones, p. 107.
[66] Ibid., p. 109.
[67] Ibid., pp. 107-9.

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made unduly high for the independent operators.[68] Since the railroads had their own mining interests it made no difference whether the profits were distributed on the shares in the mining or the railroad companies. If a coal company incurred a deficit it was reimbursed from its respective railroad company. The coal railroads all showed a very rapid advance in the value of their stocks after 1898. In every case, the value of the stocks was doubled and for most roads trebled. That this was due to effective cooperation was further shown by the fact that during the rapid increase of shipments, though fluctuating annually in amount by even as much as half the usual output, nevertheless the annual proportion of the total output carried by each railroad remained quite constant.

A study of the prices[69] of anthracite coal at tide-water points shows that the fluctuating prices prior to 1899 gave place to steady and rapidly advancing prices until 1903, after which they remained constant until 1912, the year of the strike, when prices were raised twenty-five cents per ton. This constancy of price and the 1912 increase, which could only be partly attributed to increased cost of operation, indicate an understanding among those who control the production of coal. That profits were excessive is further shown by the fact that in addition to the heavy burden of interest on unused coal lands and the watering of stock, the railroad companies usually paid large dividends.

In spite of the numerous investigations and suits, both state and national, the coal combination has succeeded since 1898 in maintaining an effective control over the production and sale of its products. The strike of 1902 and the resulting rise in price provoked the first attack upon the combination. The Interstate Commerce Commission began taking testimony in April, 1902, but the officials of the railroad and of the coal companies refused to give the necessary evidence and testimony. The Commission took their complaint to the District Court, which decided against the Com-

[68] Jones, pp. 132-55.
[69] Ibid., pp. 154-179.

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mission, but the Supreme Court reversed (1904) the decision of the Circuit Court, and the Commission continued the taking of evidence up to 1906. No decision was rendered and little was accomplished beyond the accumulation of useful information.

The consolidation movement, numerous labor difficulties, complaints of railroad discrimination against the independents, and the various investigations into the industry, together with the agitation for further regulation of common carriers, were factors which helped to bring about the Hepburn Act in 1906. The portion of the act affecting the coal combination is known as the Commodity Clause, which was designed to prevent railroads from engaging in any other business than that of common carriers by making it illegal for any railroad company after May 1, 1908, to transport in interstate commerce "any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."[70] We are concerned here only with the proceedings under this law which had as their object the destruction of the coal combination.

Proceedings under the act were immediately brought against the Delaware and Hudson Railroad to enjoin it from transporting coal in which it had an interest through its coal company. The Circuit Court held that the coal railroads must either cease transporting coal to other states or divest themselves of all title and interest direct or indirect in their coal properties, by a compulsory sale of their coal lands and their stocks in coal companies.[71] Upon appeal, the Supreme Court in 1909, so interpreted the clause as to render it quite ineffective[72] by declaring that "interest" referred simply to a "legal" interest, and that a railroad could not be said to be interested directly or indirectly

[70] 34 Stat. 584.
[71] 164 Fed. Rep., 217-254.
[72] 213 U. S. 366-419.

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in the mining of coal, merely because it owned all the capital stock of a coal company which conducted the mining operations. Thus interpreted this clause affected only a few railroad companies which directly mined their own coal without the mediacy of a separate organization. These companies proceeded to reorganize their affairs by creating out of their own funds an agent corporation to which the coal was transferred before shipment. The shares of the new companies were distributed as stock dividends to the coal carrying railroad companies. The new coal companies, having in most cases the same officers and stockholders as their respective railroad companies, have paid very large dividends. It was six years before a suit carrying indictments of these devices to evade the commodity clause was brought before the Supreme Court, with the results as noted later.

Coincidently with the cases involving an alleged violation of the commodity clause, the Government was conducting a suit against certain anthracite coal roads and their subsidiary coal companies for violation of the Sherman law. The defendants in this suit, begun in 1907, may be grouped as (a) the Reading Company (the holding company); (b) seven railroad companies; (c) the respective coal companies of the railroads, including the Temple Iron Company, jointly owned by the defendant railroads; and (d) the individual operators who had signed over their coal production through the percentage contracts.

The Government charged that the defendants had entered into a combination or conspiracy by which they restrained and monopolized the anthracite coal trade, and that in developing the combination, a number of contributory acts had been committed, each of which in itself was in restraint of trade: (a) the purchase of certain railroads by the Erie; (b) the defeat through the Temple Iron Company of an attempt to build an independent road to tide-water; (c) the purchase of the Pennsylvania Coal Company and its allied railroads and the consequent abandonment of a second independent outlet; (d) the purchase of the Central Railroad of New Jersey by the Reading Company; and (e) the signing of the uniform percentage contracts. The only

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contention of the Government that was sustained by the Circuit Court in its decision in 1910, was that the railroads had unlawfully combined through the Temple Iron Company to prevent the building of a proposed independent railroad.[73] The charge that the defendants had entered into a general combination or conspiracy was unanimously dismissed.

An appeal was taken and the Supreme Court rendered a decision in December, 1912.[74] Against the charge that there existed a general combination, the court unanimously held (three judges not participating) that the case was "barren of documentary evidence of solidarity." The Court held that the Government had failed to show any specific acts or agreements between the defendant carriers to distribute the total tonnage of coal according to a definite scale of percentages. All the charges of the Government were dismissed save two. The perpetual percentage contracts were declared unlawful, thereby reversing the Circuit Court decree, and were ordered to be cancelled. The Court held that the combination through the Temple Iron Company was unlawful. This company, the Court held, "has been and still is an efficient agency for the collective activities of the defendant carriers for the purpose of preventing competition in the transportation and sale of coal in other States."[75] The final decree provided that a purchaser of the properties of this company must be a bona fide purchaser, not one in privity with or sustaining any relation in interest, direct or indirect, to any of the defendants.[76]

In accordance with the decree the directors of the Temple Iron Company sold the stock of its eight coal companies, but they sold the stock to Mr. S. B. Thorne, who was at one time general manager of the Temple Iron Company.[77] Most of the percentage contracts were terminated. A modification of the decree was secured which permitted some of the contracts to continue.[78]

[73] 183 Fed. Rep. 427-497.
[74] 226 U. S. 324-373.
[75] 226 U. S. 352.
[76] Jones, p. 217.
[77] Ibid.
[78] 228 U. S. 158.

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When the court dismissed without prejudice the charges against the minor combinations, including the purchase of various railroads by rival roads, the legality of these combinations was left undetermined. In 1913, the Government brought suit against the Reading Company and its affiliated roads and coal companies, charging restraint and monopolization of trade in anthracite coal.[79] It charged that the acquisition of the Central of New Jersey, and various other roads and coal companies, as well as the making of certain contracts, were in violation of the trust laws. The decision of the Circuit Court in 1915 was adverse to the Government except in that the union through a holding company of the Philadelphia and Reading Coal and Iron and the Lehigh and Wilkes-Barre Coal companies, controlling 20 percent of the anthracite output, was declared illegal and the defendants were asked to present a plan for its dissolution. Cross appeals have been taken to the Supreme Court where the case is still pending.

As indicated above, the Government, after a number of years, brought suits against railroads which circumvented the commodity clause legislation by creating their own coal companies to carry on their coal sales or operations. The first suit was against the Delaware, Lackawanna and Western Railroad. Following the decision of the Supreme Court that a railroad was not legally interested directly or indirectly in mining coal merely because it owned all the stock of a coal company which conducted the mining operations, this railroad, following the example of others, organized the Delaware, Lackawanna and Western Coal Company whose capital stock of $6,800,000 was subscribed for and paid in full by the stockholders out of an extra 50 percent cash dividend declared by the railroad company.[80] The two companies had common presidents, officers, and directors. They at once entered into exclusive contracts by which the railroad, after reserving what it needed for its engines, agreed to sell and the coal company to buy. f.o.b. the mines, all the coal produced or purchased by the railroad at a price

[79] 228 Fed. Rep. 229.
[80] 238 U. S. 516 et seq.

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equal to 65 percent of the tidewater price on the day of delivery at the mines. The coal company was bound to ship the coal over the railroad where possible. Thus, the railroad continued its mining business, producing about 7,000,000 tons and purchasing about 1,500,000 tons annually from other operators along its line. It sold to the coal company about 7,000,000 annually.

In 1913 the Government filed suit against the railroad and coal companies, charging the defendants with transporting coal in which they had an interest in violation of the Commodity Clause, and with entering into an unlawful contract giving a monopoly of the sale of coal produced along the line of the railroad. The Circuit Court dismissed the case[81] in 1914 on the ground that the defendants were not violating the Commodity Clause as interpreted by the Supreme Court, but in 1915 the Supreme Court unanimously reversed the decree, maintaining that the unity of management existing between the companies constituted a violation of the Commodity Clause, and that the contract between the companies was a violation of the trust laws.[82] The latter court again declared that the stock ownership of the two companies by the same stockholders was not illegal. However, it held that if the railroad continued in the mining business, it must absolutely dissociate itself from the coal before transportation begins and could not sell it through an agent, such as the coal company was declared to be, nor to any other buyer not absolutely free to compete with the railroad in the sale and purchase of coal. The Circuit Court, as directed, entered a decree enjoining the railroad from further transporting coal sold under the above contract. In compliance with the decree the common directors, officers, and officers of the companies were discontinued and a new contract was entered into by which the railroad was to sell all its coal output, except what was needed to run its engines, to the coal company at a fixed price instead of at a percentage of the tide-water price, but the coal company was not denied the right to purchase coal from others. This

[81] 213 Fed. Rep. 240.
[82] 238 U. S. 516.

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dissolution, if such it can be called, is open to all the objections against the Standard Oil dissolution. It was merely a legal one. Under the extremely favorable circumstances for cooperating, it cannot be expected that these companies, having common stockholders, interests, and well established unity of action, will compete after realizing such enormous profits through many years by such cooperation. Almost identical charges were filed against the Lehigh Valley Railroad in 1914. This suit was immediately dismissed by the Circuit Court, but has been appealed.

Thus the Government has endeavored to effect a dissolution of the anthracite coal combination in suits under both the Commodity Clause and the Sherman law. The principle and intent of the former of these laws has met with very little success in its application, because of the first interpretation put upon it by the Supreme Court. A decision of this court six years later restored partial vitality to the Clause. But even should this and other decisions make it enforceable in other industries, it is very doubtful if it will restore competitive conditions in the anthracite industry since the railroads or their subsidiaries now own or control over 90 percent of the annual output, and even a larger percentage of the unmined coal. Mr. Jones concludes that "Were the coal companies to be separated from their present railroad control, the result, in all probability, would be either the organization of a coal trust, or an agreement of some kind among the coal companies to restrict output or to fix prices." [83]

Prosecutions to dissolve the coal combination under the Sherman law also have proved unsuccessful. In the first attempt, the courts held that there was not enough "documentary evidence" to convict. If successful prosecution in this, as well as in other industries, is dependent upon documentary evidence, conviction will become increasingly difficult. Some of the most dangerous monopolistic controls are wielded without the aid of formal agreements and in future prosecutions such evidence will be more difficult to obtain. Even though, through the present attempts to break up the minor combinations, or through other remedial measure, the

[83] Jones, p. 219.

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dissolution of the coal combination should be finally effected, it would be exceedingly difficult, in view of concentration within a few hands of substantially the entire supply of anthracite coal, to prevent the formation of an "entente cordiale" among the companies which would make it possible to maintain prices and to direct the entire policy of the industry.

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CHAPTER VI

DECISIONS SINCE 1911 (CONTINUED)

THE STANDARD SANITARY MANUFACTURING COMPANY [1]

THE "Bath Tub Pool," organized early in 1910, represents an attempt to build up a monopoly under the cover of patent rights in the sanitary enamel ware business. Sixteen corporations and thirty-four individuals, who controlled about 85 percent of the production of sanitary enameled iron-ware such as bath-tubs, tanks, sinks, drinking fountains and articles of like nature, entered into combination agreements for the purpose of limiting the output and fixing the sale prices of their products.[2] There remained outside the combination only six manufacturers who controlled about 15 percent of the trade.

The combined manufacturers agreed to sell the different grades of enamel ware at prices and on terms fixed in schedules or arranged by a committee of six from their number, and to sell only to jobbers who should sign the resale price contracts prepared by the combination. To secure the loyalty of the manufacturers who entered the combination, powerful pressure was brought to bear through the manipulation of royalties on patented automatic dredgers which were used for distributing the enameling powder over the surface of the iron ware while at very high temperatures. There were three kinds of patented dredgers, each controlled by a different company. The dredgers competed for the same work and were very useful but they were not essential in the manufacture of the ware.[3] One of the first acts of

[1] 226 U. S. 20-98; 191 Fed. Rep. 172-194; Stevens, W. S., A Group of Trusts and Combinations, Quart. Jour. of Econ., V. 26, pp. 617-625.
[2] 226 U. S. 43-4.
[3] 191 Fed. Rep. 184-7.

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the combination was to have the patents of the dredgers transferred to a single company which should act as licensor to the other corporations. The Standard Sanitary Manufacturing Company, which controlled 50 percent of the enamel ware production, acted in this capacity.[4] Each manufacturer agreed to pay a monthly royalty of $5.00 per day for the dredgers for each furnace in use, but if the manufacturer observed all the terms of the combination agreement, 80 percent of the royalty was returned.[5] Since the defendants owned 195 furnaces, or 78 percent of the total number, and the payment of the rebates was kept four months in arrears, there were usually from $40,000 to $50,000 due, which would be forfeited if the combination agreements were violated.[6]

The combination also agreed to sell goods only to jobbers who signed a resale price contract which bound the jobber to purchase exclusively from the combination and to sell only at prices and terms named in the resale lists. More than four-fifths of the jobbers of the country signed these contracts. To secure the loyalty and exclusive service of the jobbers a system of rebates amounting to from 5 to 7½ percent of the sale prices was adopted.[7] The payments of the rebates were also kept in arrears in amounts aggregating about $500,000 and jobbers violating their contracts forfeited the rebates in arrears.[8] The country was divided also into zones and jobbers were required to sell at the prices established for each zone.

The monopolistic power thus obtained was used to control prices. The combination not only prevented reductions in price that would otherwise have been made, but it raised prices considerably in a business amounting to from $10,000,000 to $14,000,000 annually.[9]

In 1910 the Government filed a suit to dissolve the combination. The defendants were charged with forming a com-

[4] *226* U. S. 86.
[5] 191 Fed. Rep. 174.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid., pp. 176, 180-1.

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bination, under cover of patent licensing arrangements, in order to restrain competition and enhance prices of enamel ware. It was claimed by the combination that the patented automatic dredgers made their contracts and agreements lawful, but the Circuit Court held that the dredgers were in no wise "essential" but only "useful" tools.[10] The agreement among the defendants was held to be for no other purpose than to fix prices and restrict competition.[11] The court enjoined the signing of restrictive contracts which were forced upon the jobbers before they were allowed to handle the wares. The wares were unpatented and the contracts were held to constitute restraints of trade not covered by patent rights. Relief was given as prayed by the Government. The Supreme Court affirmed this decree in 1913.[12]

In addition to the above suit a criminal indictment under the Sherman law was returned in 1910 against the same defendants, charging the same acts. After a trial lasting three months, the jury in the case reported a disagreement in 1912. Retrial early in the following year resulted in a verdict of guilty, and fines aggregating $51,006 were imposed.[13]

The United Shoe Machinery Company[14]

The study of the legal proceedings against the United Shoe Machinery Company is important because it shows a high degree of monopoly secured by means of the control of certain patents. The boot and shoe business ranked eighth in importance among the manufacturing industries of the United States in 1909. There were 1,343 shoe manufacturers, all independents, having an aggregate

[10] 191 Fed. Rep. 186.
[11] Ibid., p. 182.
[12] 226 U. S. 20.
[13] The Federal Antitrust Laws, Washington, 1916, p. 65.
[14] Roe, Richard—The United Shoe Machinery Company, Jour. of Pol. Econ., V. 21, pp. 938-953. (Cont'd.) V. 22, pp. 48-63; Montague, G. W.—The Conservation of Business Opportunity, Jour. of Pol. Econ., V. 20, 1912, pp. 618-626; 227 U. S. 202-10; 222 Fed. Rep. 349-380; 227 Fed. Rep. 507-10; 234 Fed. Rep. 127-30.

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capital stock of $277,468,000, and products valued at $442,600,000.[15] While trust control had made no headway in the manufacture of shoes it was very complete in the manufacture of shoe making machinery.

Prior to the Civil War, the cost of sewing the welt and stitching the sole on a pair of shoes by hand ranged from 60 to 75 cents. The invention of the Goodyear welting and stitching machines at that time reduced the cost of this work to about 10 cents per pair of which 4 cents were for the use of the machines and 6 cents for labor. This meant a revolution in the industry. One invention followed another until no less than fifty-eight machines, and frequently twice that number, were used to make a good shoe. Among these, four were essential for the process of shoe manufacture. These were (1) the lasting machines, including all those used for lasting the uppers of shoes; (2) the heeling machines, used for preparing and attaching the heels; (3) the welt sewing and outsole stitching machines; (4) the metallic fastening machines, used for preparing and attaching metallic fastenings on shoes. These machines were expensive to manufacture and as they were made under patents the shoe manufacturers were forced to buy from the companies controlling the patents.

Until 1899 four independent shoe machinery companies manufactured and sold or leased from 70 to 80 percent of these four kinds of essential machines.[16] These four companies were the Goodyear Shoe Machinery Company, the Consolidated and McKay Lasting Machine Company, the McKay Shoe Machinery Company, and the Eppler Welt Machine Company, all of the state of Maine. In 1899 the four companies united under a liberal charter to form the United Shoe Machinery Company of New Jersey, with an authorized capital stock of $25,000,000. The new company took over all the assets of the above companies and manufactured at a single new factory all the machines formerly made by the separate companies. Mr. Louis Brandeis, now a member of the Supreme Court, was a director and legal

[15] Montague, Jour. of Pol. Econ., V. 20, pp. 621-2.
[16] 227 U. S. 205.

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advisor of the company for nearly eight years following its organization.[17]

Not content with the extent of monopoly control resulting from the act of combination and the exclusive character of its patent rights, the United Shoe Machinery Company sought a more complete control through a comprehensive and effective system of leases. Before the merger, the separate companies both sold and leased the patented machines to the shoe manufacturers, but after the merger all such machines were only leased under binding contracts of seventeen years duration in which the lessee agreed[18] not to use any machine of the company upon any foot-wear which had not had certain essential operations performed upon it by other machines leased from the company; to use the leased machines at fullest capacity; to use exclusively the leased machine for the work for which it was designed; to obtain all repairs and supplies for the machines from the lessor; to use patented insoles made on lessor's machinery only in connection with foot-wear manufactured by machinery leased from the company; to lease from the company any additional machinery which may be needed for work in the same department where leased machines are used; and as a penalty for violating the contract the company reserved the right to terminate any of the leases and remove all the leased machines. On March 1, 1911 the company had 90,276 machines leased in the United States.[19] The leases were for seventeen years regardless of the date on which the patents expired. This tended to make permanent the monopoly of the patents because the Shoe Machinery company continued to acquire the best patented machines and processes, and to link up the leases of unpatented machines with those patented.

The tieing clauses, as they were called, of these leases worked far more injustice to the manufacturers of shoe machinery than to the manufacturers of shoes. All shoe manufacturers, big and little, were apparently treated alike. In

[17] Roe, Jour. of Pol. Econ., V. 21, p. 943.
[18] Ibid.
[19] Ibid.

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return for a royalty each had the use of the best modern machinery without initial cost to himself, and each paid according to the amount of service received. The company kept the machines in repair and was interested in the output of the shoe manufacturer. For all the machines furnished by the company the royalty did not exceed 8 cents per pair.[20] For the higher grade shoes it was about 5½ cents, for the average grade about 2⅔ cents, and for over 164,000,000 pairs of the annual production the royalty was 1½ cents.[21] Many of the small shoe manufacturers declared they could not compete with the larger manufacturers except for the equal treatment in the matter of royalties and the small capital requirement.[22] Many believed that the leasing system had prevented a trust in the shoe making industry. However, the shoe manufacturer was forced to buy all his machinery from the United Shoe Machinery Company or buy it all from independents, and the latter did not have all the essential machines.

These tieing clauses resulted in forcing many companies engaged in the manufacture of shoe machinery to close their plants or to sell out. Beside two other companies acquired at the time of the merger, the United Shoe Machinery Company, between 1899 and 1911, acquired the business of sixty different concerns or persons, of which number thirty-seven were competing companies.[23] The most notable of these was the T. G. Plant Company. Mr. Plant succeeded in inventing a whole line of shoe machinery of his own. Almost before selling any of his machines his business and patents were acquired by the company for $6,000,000.[24] Many of the acquisitions were merely patents and improved processes. The companies and persons whose interests were acquired agreed not to reengage in the business, and also to turn over any invented, improved or acquired processes and patents. Thus, while patents formed the basis of control, it was only by means of restrictive contracts with shoe manufacturers,

[20] 234 Fed. Rep. 134.
[21] Roe, Jour. of Pol. Econ., V. 31, p. 944.
[22] Montague, Jour. of Pol. Econ., V. 20, p. 624-6.
[23] 222 Fed. Rep. 372.
[24] Ibid., p. 376.

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covenants with vanquished competitors, the acquisition of many competing concerns, sometimes at enormous prices, and the taking over of new processes, patents and trade marks, that the United Shoe Machinery Company was able to maintain its monopoly.

The Government claimed that the United Shoe Machinery Company manufactured 98 percent of the shoe machinery used in the United States, and that nearly all of the 1,500 shoe manufacturers, having a combined annual output of about 300,000,000 pairs of shoes, have business relations with this company.[25] The effectiveness of the tieing clauses in preventing competition is further shown by the fact that this company has a monopoly control in many European countries and Canada where the same leasing policy is pursued.[26]

Several attempts have been made to break this monopoly. In 1907 Massachusetts passed a law prohibiting leases with tieing clauses in connection with patented machinery, and prohibiting also the offering of unreasonable discounts or other advantages.[27] Thereupon, the United Shoe Machinery Company attached to all its leases a rider providing that "any and all agreements, stipulations, provisions, and conditions hereinbefore printed in this instrument, which are in violation * * * (of the law), if there are any such, are hereby stricken out before execution and are not agreed to nor made a part of this contract."[28] In this way, and apparently without violating the law of the state, the tieing clauses were continued unchanged and as effectively as before.

In 1911, a number of shoe manufacturers organized the Shoe Manufacturers' Alliance in order, as they stated, "to secure a change in the methods now pursued by the United Shoe Corporation, which to-day in effect monopolized the shoe machinery business in this country through its system of leases with tieing clauses."[29] In this same year the Gov-

[25] 227 Fed. Rep. 508.
[26] Roe, Jour. of Pol. Econ., V. 22, pp. 48-53.
[27] Ibid., V. 21, p. 946.
[28] Ibid.
[29] Ibid.

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ernment filed suit to dissolve the company and to have annulled the tieing clauses as furthering combination in restraint of trade. The suit was dismissed by the Circuit Court in the following year, but an appeal was made by the Government.

In 1912, two of the three members of the Canadian Investigation Board reported that "the United Shoe Machinery Company is a combine and * * * competition in the manufacture, production, sale and supply of shoe machinery in Canada has been unduly restricted and prevented." [30]

In 1913, the Supreme Court rendered an opinion in the case. The court held that "the combination was simply an effort after greater efficiency. The business of the several groups that combined as it existed before the combination, is assumed to have been legal. The machines are patented, making them a monopoly in any case. * * * we can see no greater objection to one corporation manufacturing 70 percent of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each." [31] The validity of the leases was not considered by the court at this time because they were not alleged to have been contemporaneous with the formation of the combination complained of. In the same year another petition was filed against the company seeking to have the tieing clauses annulled. In 1915 the Circuit Court sustained the legality of the leases, as well as of the combination.[32] The Government appealed from this decision and the case is now pending.

The Shoe Machinery Company continued to make seventeen-year leases after the passage of the Clayton Act.[33] In October, 1915, the Government filed a petition against the company, charging that the tieing clauses in the leases were in violation of Section 3 of this Act which declares it to be unlawful for any person to lease, sell or contract for the sale of goods or machinery, patented or unpatented, or to

[30] Roe, Jour. of Pol. Econ. V. 22, p. 57.
[31] 227 U. S. 217, 218.
[32] 222 Fed. Rep. 349.
[33] 227 Fed. Rep. 507-8.

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fix a price therefor, or discount, or rebate, upon such price, on the condition that the lessee or purchaser shall not use or deal in the goods of competitors or the lessor or seller, where the effect may be to substantially lessen competition or tend to create a monopoly.[34] In the bill the Government alleged that the defendant corporation still controlled 56 other concerns engaged in the manufacture, sale, and leasing of shoe machinery, or supplies, and that they controlled 98.5 percent of the shoe machinery business of the United States.[35] Later in the year the Government applied to the court for a preliminary injunction against the use of these tieing leases while the suit against the company was pending.[36] The court declared that Section 3 of the Clayton Act was directed by Congress at the Shoe Machinery Company, and that all the objectionable clauses of the leases were plainly in violation of the statute.[37] A preliminary injunction was granted, but upon appeal the claim for such an injunction was abandoned.[38] A motion of the defendants to dismiss the Government's suit was denied in June, 1916.[39]

The conclusion of the Supreme Court that the Shoe Machinery Company in 1899 was a combination of non-competing groups and therefore it made no difference whether the companies remained separate or became merged will not be accepted by all. At the outset these groups were by no means non-competing and have become much less so since. The merger greatly increased their combined influence and power. The competition which existed and would have continued to exist in supplying various kinds of shoe machinery had the companies remained separate has been eliminated. After the merger they united their efforts to suppress competition. After securing valuable patent rights and in effect perpetuating these through tieing clauses which covered both patented and unpatented machines, and after obtaining control of 56 competing concerns in addition to other interests,

[34] 234 Fed. Rep. 127.
[35] 234 Fed. Rep. pp. 135-6.
[36] 227 Fed. Rep. p. 507.
[37] Ibid., pp. 509-10.
[38] 232 Fed. Rep. 1023.
[39] 234 Fed. Rep. 127.

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during a period of eighteen years, the United Shoe Machinery Company surely cannot be regarded in the same light as it was in 1899, even though it were granted that the groups were non-competing at that time. Whether the tieing clauses be found to exceed the patent rights or not the consensus of opinion is that they should be eliminated.

NOTE. On May 20, 1918, seven years after the case was begun, the Supreme Court rendered a decision in favor of the United Shoe Machinery Company. The court held that the company's magnitude was the result and cause of its efficiency; that its size or power had not been oppressively used; and that its dissolution, if effected, would benefit neither the shoe business nor the public and would be detrimental to meeting urgent war needs. Only four judges concurred in the decision; three dissented, while two, Justices Brandeis and McReynolds, on account of previous connection with the case, did not participate. In their previous connection both had appeared against the company.

THE ST. LOUIS TERMINAL RAILROAD ASSOCIATION

The rule or reason laid down by the Supreme Court in the Standard Oil decision was strikingly applied in the case against the St. Louis Terminal Railroad Association, decided the following year.[40] At St. Louis, a point through which an enormous volume of traffic passed, two important physical obstacles were encountered by the railroads.[41] The first was to secure passage facilities across the Mississippi River. About half of the twenty-four railroads converging at St. Louis terminated on the east bank of the river. Since prohibitive costs prevented each separate road from having its own river bridge they relied upon associated action for securing crossing facilities. Prior to 1889 the roads arranged with two bridge corporations and a ferry line for the necessary passage across the river. The second physical obstacle was to secure an entrance into the municipal limits

[40] 224 U. S. 383.
[41] Ripley, Railroads Finance and Organization, pp. 559-561.

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of St. Louis which is located upon hills extending close to the river banks making entrance by rail from the west impossible except along certain limited approaches. Not a single railroad passed through the city. In order to provide for the necessary connections into the city several transfer and terminal companies had come into existence.

This was the situation in 1889. In this year fifteen trunk lines organized the St. Louis Terminal Railroad Association. This association acquired the two bridge corporations and the ferry line, which controlled the facilities for passage across the river, and also the transfer and terminal companies, which had the only connections into the town. The stock ownership of the Terminal Association was evenly divided among the fifteen trunk lines and no new roads could enter the association without unanimous consent. The other lines and those of the future were made dependent upon the association.

After a number of years some of the outside carriers, including the Rock Island, began to complain that they were not able to obtain the same treatment as to facilities as those enjoyed by the association carriers. They claimed that the whole arrangement was detrimental to the public interest and was a violation of the Sherman law. In 1905 the Government brought suit against the association charging it with maintaining a combination in violation of the Sherman law, and asking that the defendant railroads be enjoined from continuing to operate Eads Bridge and Merchants Bridge as a common agency of interstate commerce.[42] The trial before the Circuit Court resulted in a disagreement of the circuit judges and the case was carried to the Supreme Court which remanded it back for further proceedings. The Circuit Court then dismissed the case, but an appeal was taken, and in 1912 the Supreme Court reversed the decree of the Circuit Court, and again remanded the case with directions to enter a decree.[43] A final decree was entered in 1914 and was later affirmed by the Supreme Court.

The St. Louis Terminal Association was held to be an un-

[42] The Federal Antitrust Laws, Washington, 1916, pp. 52-3.
[43] Ibid.

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lawful combination, but instead of entering a decree of dissolution as would undoubtedly have followed according to the earlier interpretations of the law, the Supreme Court, following the rule of reason, rendered a decision favorable to all concerned, the Terminal Association, the aggrieved railroad companies and the public.[44] The court declared that the violation grew "out of administrative conditions which may be eliminated and the obvious advantage of unification preserved" in such a manner as "will amply vindicate the wise purpose of the statute and will preserve to the public a system of great public advantage."[45] Instead of breaking up the cooperative arrangement of the association, which would have involved great economic waste, expense and inconvenience to the public, the court prescribed certain changes in the organization and practice of the association, which would allow it lawfully to continue.[46] One of these changes provided for admitting any existing or future railways to joint ownership and control in the association. Another extended the use of the facilities of the transfers and terminals to any carriers not desiring to become stockholders in the association. A third change annulled the existing restrictions to the use of the terminal company's lines. Arbitrary charges for trans-Mississippi traffic originating within one hundred miles were also prohibited.

The decision is significant in illustrating how a reconciliation of the public interests with the financial and operating necessities of the railroads was effected without destroying efficiency and competition. It has been pointed out by some writers that this decision suggests the best solution for many instances where the antitrust laws are violated.

The New Haven Railroad

The rise and fall of the New Haven railroad monopoly, embracing nearly all of New England, belongs to recent his-

[44] 224 U. S. 383.
[45] Ibid., pp. 410-11.
[46] 224 U. S. 411-3.

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tory.[47] Prior to 1900 two railroad monopolies had been formed in New England, each respecting the territory of the other. The Boston and Albany Railroad running due west across Massachusetts marked the line of division. South of this line during the 90's the New Haven company aggressively, and often by discreditable means, merged its competitors, both large and small, as well as local and disconnected transportation interests, into the New Haven monopoly. At the same time the Boston and Maine built up a similar but larger monopoly control in the territory north of the Boston and Albany line. In 1900, the New Haven acquired control of the Boston and Albany by lease. This left the transportation business about equally divided between the two great territorial monopolies, each having over 2,000 miles of line branching out from Boston.

The New Haven rapidly extended its control. In 1901 the Central New England and the New York, Ontario and Western railroads were acquired, giving it direct access to the anthracite coal fields and to the Great Lakes, and also a new route across the Hudson River. Within three years, almost all of the numerous competing or connecting electric trolley lines throughout Connecticut, Rhode Island and western Massachusetts were acquired. The climax came in 1907 when the New Haven acquired a controlling interest in the Boston and Maine, thus uniting the two territorial monopolies. The Albany-New York Central was the only independent line into Boston, and in 1911 this road was brought into the New Haven monopoly through a co-operative arrangement whereby the profits or losses were equally shared. At this time the acquisition of the Rutland Railroad gave an outlet both to Lake Ontario and Montreal.

However, the success of the New Haven transportation monopoly was dependent upon the control of steamship lines as well as railroads.[48] In 1893 twenty boat lines operated by seventeen companies conducted the New England water transportation. Nine new boat lines were added. To secure

[47] Ripley—Railroads, Finance and Organization, pp. 251-8; 420-3; 462-73; 571; 3.

[48] Ibid., p. 469.

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control of this coastwise business the New Haven acquired within a few years twenty-two of the twenty-nine boat lines. Some of the companies were purchased in the open market, while others were forced to sell after encountering most unfair competition. In order to make its control more complete and permanent the New Haven, by various means, secured control of all the available water front, not only at Boston but all along the seaboard of New England, giving an absolute control of about 90 percent of the water transportation of the New England States.[49]

The monopoly was constantly enlarged by purchases regardless of cost. From 1903 to 1912 the outstanding securities of the company increased from $93,000,000 to $417,000,000, although the operated railroad mileage increased only fifty miles.[50] Much more than half of the increase was invested in trolley companies, steamship lines and electric light and power plants. Both the financial and operating management of the New Haven under the entire Mellen-Morgan regime was corrupt and an unparalleled disregard was shown alike for the interests of the public, the stockholders, and the investors. Gross overcapitalization occurred; frequently there was complete break-down of service resulting from terrible accidents; great losses and delays were common. The corruption included large secret profits to insiders; falsification of corporate accounts; distribution of unearned dividends; the breaking of solemn agreements of every sort; lack of personal honor; and the violation of every principle of political decency, including wholesale bribery of the legislature, the press, and influential citizens, in order to force desired legislation or to thwart remedial legislation demanded by the public.[51] After a bitter and corrupt political campaign in 1913, a new public service commission was established, but the New Haven system was already nearly destroyed by its own corruption. The stockholders began to see the real situation—that both principal and income were endangered because of losses on

[49] Ripley, Railroads, Finance and Organization, p. 469.
[50] Ibid., p. 252.
[51] Ibid., pp. 472-3.

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all sides. The price of New Haven stock, which for twenty years prior to 1906 had usually been $200 or more per share, gradually declined until in 1913, it was worth only about $60, and the low point of $43 was reached early in 1915.

Efforts to curb the New Haven's rapid concentration of power had been made in vain. In 1908 a decree of the Supreme Court of Massachusetts enjoined the company from holding stocks in any trolley lines in the state after July 1, 1909.[52] This brought the road to terms and a working compromise was agreed upon in which the court consented to the New Haven's continued control of the Boston and Maine, provided it was accomplished through a Massachusetts holding company. In complying with the decree the New Haven organized the Boston Railroad Holding Company which took over a majority of the Boston and Maine stock. The New Haven also agreed to improve its service and abstain from political activities.

The Federal Government also instituted proceedings under the Sherman law against the New Haven in 1908, charging the company with monopolizing the steam and electric railway systems of New England. In the following year the proceedings were dismissed after a formal agreement had been entered into between President Roosevelt and the New Haven management. In this agreement the latter promised thereafter to be a "good" monopoly.[53]

The absolute failure of the New Haven to fulfill the above promises has already been shown. In 1914, the Government began dissolution proceedings. Because of its financial circumstances the company feared a long and expensive suit that would likely have resulted in putting the company in the hands of a receiver. Upon securing a formal agreement to dissolve the New Haven system into its component parts, the Government withdrew its suit.

The dissolution plan was officially summarized as follows:[54]

"First. The Boston Railroad Holding Company is a

[52] Ripley, Railroads, Finance and Organization, pp. 571-2.
[53] Ibid., pp. 571-2.
[54] Ibid., p. 572.

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Massachusetts corporation holding a majority of the stock of the Boston and Maine Railroad, and 90 percent of the former's stock in turn is owned by the New Haven. * * * the stock of the holding company will be transferred at once to five trustees, and, after arrangements have been made to protect the minority stock of the holding company, they shall sell the Boston and Maine stock prior to January 1, 1917.

Second. The stock of the companies which control the Connecticut and Rhode Island Trolleys will be placed in the hands of trustees—five for each state—and shall be sold within five years from July 1, 1914.

Third. The majority stock of the Merchants and Miners Transportation Company, now held by the New Haven, will be placed in the hands of three trustees and shall be sold within three years from July 1, 1914.

Fourth. The minority stock in the Eastern Steamship Corporation, held by the New Haven, shall be sold within three years from July 1, 1914, and in the meanwhile shall be deprived of voting power.

Fifth. Whether the New Haven railroad shall be permitted to retain the sound lines will be submitted to the Interstate Commerce Commission for determination under the provisions of the Panama Canal Act.

Sixth. The Berkshire trolleys shall be sold within five years from July 1, 1914." [55]

The book value of the various investments of the New Haven system involved in this dissolution operation amounted to $133,815,082. The dissolution after providing for the separation of the two territorial monopolies—the Boston and Maine and the New Haven—further divests the two companies of the control of the trolley and electric railways, which represented a very large part of the New Haven securities. The dissolution also provides for the weakening if not the breaking of the New Haven's control of water transportation in New England. The fate of the Long Island Sound lines was left to the decision of the Interstate Commerce Commission.

Soon after the above decree was entered, the Government

[55] Ripley, Railroads, Finance and Organization, p. 572.

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instituted a criminal suit against Mr. Rockefeller and twenty others, each at some time a director or officer, or both, of the New Haven company, charging them with conspiring to monopolize the transportation facilities of New England. A three months' trial in 1916 of eleven of the principal defendants resulted in the acquittal of six and a disagreement as to the other five.

The National Cash Register Company

The National Cash Register Company has excelled all American trusts, with the possible exception of the Standard Oil, in the use of unfair methods of suppressing competition. It was chiefly due to the vigorous employment of such methods that the company early obtained almost complete control of the cash register business of the country.

The National Cash Register Company was organized in Ohio in 1882 and was reorganized as a New Jersey company in 1899. The present company under the same name was organized in 1906 by the Paterson interests which controlled the former organizations. The usefulness of cash registers as record-keeping and cash receptacle devices gave rise to such an increased demand for the machines that many other concerns came into existence for their manufacture and sale. However, the National Cash Register Company was determined to permit no competition to exist for any length of time. Its intention to monopolize the cash register business was freely published in the literature sent by the company to its agents. From time to time meetings of its officers and agents were held to discuss plans for the elimination of all competition. To accomplish this purpose a special department was created, which was designated as the "Competition Department" or the "Ways and Means" department. It was aided by the information obtained from hired agents who resorted to bribery and other practices paralleling those of the Standard Oil to accomplish their purpose. Among the various methods of suppressing competition employed by the company were: the use of "knock out" men whose business it was to interfere with the sales made by

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competitors and to make threats, intimidations and assaults, if necessary, to prevent such sales; persistent and nation-wide espionage upon the business of competitors; buying over the salesmen of competing firms; circulating among its agents a black list containing the names and latest information gathered concerning competitors; selling cash registers known as "knockers," which closely resembled those of competitors, at ruinous prices until the competitors were eliminated; instituting costly suits whose only intent was to delay, wear out, and discredit competitors; bringing actions for alleged infringements of patents; intimidating purchasers of competitors' goods and inducing them to break their contracts and to refuse payment of sums owed such competitors, the National agreeing to assist such purchasers if suits were brought against them; misrepresenting competitors' registers and even destroying their mechanism in order to make purchasers dissatisfied with them; defaming and ruining the credit of competing companies; and the common practice of operating many bogus or secretly owned companies which posed as independents in order to secure the patronage of those hostile to the trust and to obtain inside information relating to competitors.[56]

The foregoing list is not complete. The federal grand jury declared that the unfair, oppressive, and illegal means used by the company were so numerous in kind and so shifting in character as to make description impossible. Only a few of these predatory practices call for further comment. The sale of specially made registers at ruinous prices was effective in destroying competitors. Whenever a new company entered the field, registers similar to those made by the new company were sold at low prices by the National until the new company was eliminated. Cash registers, purchased from competitors or secured by forcing them out of business, were advertised and sold below cost of production, thus intimidating both dealers and manufacturers through danger of financial loss. The effectiveness of bogus independent companies has frequently been mentioned. Such companies,

[56] 55 Fed. Rep. 605-6; 201 Fed. Rep. 701-4; Stevens, Quart. Jour. of Econ., V. 26, pp. 625-630.

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pretending to compete with the National, were common and were used to wage local price cutting wars against competitors or to secure trade secrets and inside information concerning them. Two other methods of intimidation may be described. In the factory at Dayton, Ohio, the National maintained a display room known as the "Grave Yard" or "Midway" in which the company exhibited the registers of vanquished competitors. Display cards gave the name of the company which made the register, the date of its dissolution, the amount of money lost, etc. Manufacturers, merchants, and other visitors were shown through the "Grave Yard." Another device was the publication and distribution of lists purporting to give the names of concerns eliminated from the cash register business. One list, issued in January 1910, contained the following statement: "Within the past fifteen years, 158 cash register companies have been organized to compete with the National Cash Register Company. Of these, 153 have failed in business. Their combined capital was $5,735,000. Their combined loss was $1,970,000. According to the sworn affidavit of its officers, the Boston Cash Register Company alone lost $192,750.08. Of every 20 cash registers sold, 19 are Nationals." [57]

It was largely through the practice of unfair methods that the National Cash Register Company was able to dominate the business so completely. The percentage of the total business controlled by the National Cash Register Company which was about 82 in the early nineties was later increased to 95.[58] Such complete and increasing control in a large and growing business, which required small capital to enter, is evidence of the effectiveness of the National's methods of restricting competition.

In 1893 a criminal suit under the Sherman law was brought against John H. Patterson and others of the National Cash Register Company, charging them with entering into a combination for the purpose of controlling the price of cash registers. The indictments contained counts

[57] Stevens, Quart. Jour. of Econ., V. 26, p. 629.
[58] 201 Fed. Rep. 701.

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against nearly all the methods described above.[59] The prosecution of the case was allowed to lapse because the complaining witness entered into the combination of the defendants.

It was nearly two decades before other action was brought against the company. In the meanwhile, it continued the unfair and predatory practices and was able to derive large earnings from its control of 95 percent of the entire cash register business. In 1912 a second criminal suit was brought against President Patterson and twenty-nine others of the National Cash Register Company, charging a conspiracy in restraint of trade and commerce which resulted in an unlawful monopoly of the industry. The evidence showed the use of nearly every method of suppressing competition enumerated above.[60] The trial resulted in a verdict of guilty against twenty-nine of the thirty defendants and fines aggregating $135,000 and jail sentences ranging from nine months to one year were imposed.[61] Mr. Patterson was sentenced to serve one year in jail and pay a fine of $5,000. The defendants appealed to the Circuit Court of Appeals. This court, after a lengthy review of the case, reversed the judgment of the lower court on rather technical grounds and remanded the case back for retrial. The Government applied to the Supreme Court for a review but this was denied.[62] The retrial was not pushed, and early in 1916 the criminal proceedings were dropped when a decree, described below was entered in a civil case against substantially the same defendants.

The civil case against the National Cash Register Company and others was filed about six weeks before the filing of the above mentioned criminal suit.[63] Both of these actions under the Sherman law were against substantially the same defendants and contained similar charges of restraint and monopolization in the cash register business. A consent decree was entered in the Circuit Court by the attorneys for

[59] 55 Fed. Rep. 805-6.
[60] 201 Fed. Rep. 701-4.
[61] The Federal Antitrust Laws, Washington, 1916, pp. 73-4.
[62] 238 U. S. 635.
[63] The Federal Antitrust Laws, Washington, 1916, p. 70.

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the defendant and the Government in February, 1916.[64] By the terms of the decree the Government secured practically every change asked for in its civil suit against the company. It was established that the defendants had combined to restrain and to monopolize the cash register trade in violation of the Sherman law, by one or the other of the means which the decree enjoined.

The restraining provisions covered over seven pages of the decree and included the following acts:[65] (1) inducing a purchaser of a competitor's cash register to break his sale or agreement with such competitor; (2) espionage for the purpose of obtaining information concerning a competitor's purchasers or business; (3) illegally securing a competitor's business secrets; (4) buying up or inducing agents of competitors to leave their employers; (5) using any information obtained from an employee of a competitor relating to trade secrets or business confidences of his employer; (6) manufacturing or offering to sell any cash register resembling a competitor's register for the purpose of preventing sales of such competing machines, or selling any registers without regard to its cost of manufacture with intent to drive out competitors; (7) disposing of any cash register of a competitor, no matter how obtained, for the purpose of preventing sales by such competitor or for any other purpose mentioned; (8) disposing of second-hand registers for the special purpose of underselling a competitor and driving him from business; (9) employing any person whether known as a "special man" or "competition man," whose principal business is to prevent sales of cash registers of a competitor, or his agent, or dealer; (10) following from place to place competitors or their agents for the purpose of hindering their attempts to sell or to ascertain the names of persons, places of business, and dealers they may call upon; (11) circulating any statement reflecting upon the solvency or responsibility of a competitor, or upon the efficiency of a competing register when such statement is a misrepresentation or is made for the purpose of preventing the

[64] Final Decree, Washington, 1916.
[65] Ibid., pp. 3-10.

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sale of competing registers, or of driving such competitors from business; (12) publishing any circular or letter with the purpose of recommending or suggesting to agents any act or means of accomplishing any act which is forbidden in the decree; (13) intimidating any competitor or would-be competitor by displaying models of competing registers along with registers made in imitation of them, or by displaying quantities of second-hand registers of competitors, or by displaying statements or placards purposing to show the names of ruined competitors and the amounts lost by them in attempting to compete with the National, or by intimidating investors in the stocks and securities of competing companies formed or to be formed; (14) maintaining bogus or secretly owned companies posing as independent competitors; (15) intimidating competitors or purchasers by threats of patent infringement suits; (16) acquiring control or ownership of the business, patents or plants of competitors without the consent of the court and the approval of the Attorney General.

By the terms of the decree the court retained jurisdiction of the case for the purpose of enforcing the injunction and enabling the parties to apply to the court for modifications of the decree should changed conditions or changes of law make the decree unnecessarily oppressive to the defendants, or inadequate to maintain competitive conditions in the industry. The defendants were assessed with the costs which amounted to about $40,000. With the filing of the decree the Government announced that no further proceedings would be taken against the directors and officers of the company. If there be any persons who deserve criminal punishment under the provisions of the Sherman law, it would appear that some of the defendants, who for over thirty years had used the most unfair, oppressive, and illegal means of maintaining a monopoly, should not have been allowed to escape so easily. Undoubtedly the generosity shown by President Patterson and his associates during the Dayton flood disaster, which occurred soon after their conviction, helped to weaken the popular demand for their punishment.

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The injunction entered against the defendants appears very sweeping and covers the chief means of suppressing competition employed by them. However, many of the prohibitions will be difficult to enforce, especially since the defendants are experienced in methods of violating the law and have established habitual fear on the part of competitors. Perhaps the most important and the most promising of the restraining provisions is the one forbidding the defendants to acquire control or ownership in the business or patents of a competitor without the consent of the court. The retention of jurisdiction over the case for the purpose of enforcing the decree and maintaining competitive conditions, though uncommon, is not new. In some of the earlier dissolutions the independent interests asked the court to retain jurisdiction of the case so that they might subsequently apply for relief if necessary, but the request was usually denied.

The most serious defect of the decree was that it left a monopoly control of about 95 percent of the business in the hands of the company which had built it up by illegal methods and secured large profits from it for about thirty years. Such a degree of control gives power in itself which can be used without any apparent violation of the law. Since the capital required for entrance into the business was not large, there could have been some equitable division of the business without serious loss in productive efficiency. Even if the restraining features of the decree be successfully enforced, the company will for many years have the advantages, illegally secured for the most part, which arise from control of a large proportion of the business, patents, selling agencies, and established trade connections throughout the country. However, if unfair methods are prevented there is hope that existing competitors may rapidly expand their business. But the conclusion is inevitable that the defendants got off easily. By the terms of the decree all prosecution against them was dropped. They lost no gains or advantages illegally secured during the past three decades. The promise of the defendants to be good in the future while the court retained jurisdiction of the case is an interesting

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experiment with some of the most persistent violators of the trust laws. It may be noted that in the fixing of the decree the court did not call upon the assistance of the Federal Trade Commission.

The Burroughs Adding Machine Company

The Burroughs Adding Machine Company practiced many of the methods of unfair competition followed by the National Cash Register Company in its efforts to monopolize the trade in adding and listing machines. The profits of the company have been very large. Although a 900 percent stock dividend was declared in 1906 the cash dividends rose rapidly from 7 percent in that year to 16 percent in 1913.[66] In 1913, the Government filed a petition against the company and others, charging a conspiracy to monopolize trade and commerce in adding and listing machines. A consent decree was immediately entered, enjoining the defendants from doing the various acts complained of, including misrepresentation of competitors and their machines by act or word, espionage through corruption or bribery of employees, and inducing breach of competitors' contracts.

Since the decree was entered in 1913, dividends of 16 percent have been paid by the company and in 1916 another stock dividend of 200 percent was declared. This case furnishes additional evidence that control and profits once established by unfair methods may be maintained even though the illegal practices are later abandoned, and therefore a dissolution decree which merely prevents the repetition of the criminal tactics and leaves the guilty persons in possession of the spoils hardly meets the demands of justice.

The Aluminum Company of America

Aluminum is a metal that has many valuable properties and the invention of cheaper processes of production within comparatively recent years has given it an important place in modern industry. It is widely used in metallurgy and for

[66] Moody's Manual, 1916.

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the manufacture of cooking utensils, castings in automobiles, engines, airships and aerial crafts, submarines and boats, wire cables and transmission wires, foil for candy and tobacco. Bauxite is the chief aluminum ore and this is produced mainly by the United States and France. Cheap power is essential to its reduction on a commercial scale. In 1886, only 1.5 tons were produced; in 1891, 75 tons; in 1901, 3575 tons; in 1911, 23,062 tons. The price declined from $90 per pound in 1855 to $12 in 1870; $2 in 1890; 33 cents in 1904, and in 1910-11 it ranged from 19 to 24 cents.[67]

The Aluminum Company of America was organized in 1888 as the Pittsburg Reduction Company, with a plant near that city.[68] It used Hall's process of electrolysis which greatly reduced the cost of production. Later, the company utilized the water power at Niagara Falls, and built or acquired other water power plants in this country and Canada. It also obtained a very complete control of bauxite ore, the raw material, by means of which it dominated the production of aluminum, as well as its manufactured products. Various unfair methods were used by the company to secure and maintain its control. Many of these are described in the decree of the court, which is given below. In 1906, control was acquired over four other companies, the largest being the St. Laurence River Power Company which had outstanding $3,500,000 of common stock and $3,000,000 of cumulative preferred stock.[69] In 1907, the name of the company was changed to the present title and in 1911 it was the only producer of aluminum in the country.[70] Enormous profits were obtained by the company. The old capital stock was $1,000,000, and its assets had increased by 1915 to $27,000,000, on which it earned 17 percent. In 1909 a stock dividend of 500 percent was declared. The outstanding stock was $19,000,000 in 1916.

Late in 1912, the Government filed a petition against the Aluminum Company of America to prevent a further mo-

[67] International Encyclopedia.
[68] Moody's Manual, 1916, p. 2029.
[69] Ibid., p. 2029.
[70] New International Encyclopedia.

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nopoly of and restraint upon the trade and commerce in aluminum and aluminum wares. It charged that the company owned from 80 to 90 percent of the raw material in this country and controlled by contract the disposition of the remainder; that it prevented through contracts with foreign companies the importation of raw material; and that the company, through its subsidiaries, controlled from 50 to 70 percent of the manufacture of the finished products.[71] A consent decree was entered within a few weeks which enjoined the company as follows:[72]

1. Delaying shipments of raw material to any manufacturer competing with its own subsidiaries in the manufacture and sale of finished products, without reasonable notice and cause.

2. Refusing to ship or to continue shipments of such material to a competing manufacturer upon contracts or orders, and particularly on partially-filled orders.

3. Delaying bills of lading on such shipments.

4. Furnishing known defective material to such competitors.

5. Charging higher prices for crude or semi-finished products to manufacturers competing with its subsidiaries than it charged under like conditions to such subsidiaries.

6. Refusing to sell crude or semi-finished products to prospective competitors on like terms and conditions of sale as it sold to its subsidiaries.

7. From demanding, as a condition precedent to selling such material to a competitor, that it should divulge the terms which the competitor would make to secure the work in connection with which the material would be used and from giving this information to its subsidiaries or others.

8. Requiring competitors not to compete in certain lines with the company or its subsidiaries as a condition of securing material.

9. Representing that unless companies dealt with it or its subsidiaries they would be unable to secure a sufficient supply of the material, or at a price that would enable them

[71] Trust Laws and Unfair Competition, p. 493.
[72] Ibid., p. 493.

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to compete with it; or that their supply would be cut off entirely.

10. Preventing the expansion of the business of other manufacturers by threatening to cut off their supply of raw material if they attempted to enlarge their business.

11. Raising the price of crude or semi-finished products to its subsidiaries in order to raise it to competing manufacturers.[73]

In spite of this injunction the strength of the company has greatly increased. The increased demand for aluminum on account of the European war more than trebled the prices of aluminum. Indirectly the war also brought about the acquisition of the Southern Aluminum Company which had outstanding $2,400,000 of common and $6,000,000 of 7 percent preferred stock. This company, which was controlled by French capitalists, had begun in 1913 the construction of an immense hydro-electric and aluminum manufacturing plant at Whitney, North Carolina. In 1914, when the plants were three-fourths completed, building operations ceased because of the lack of capital, and in the following year the Aluminum Company of America acquired the property and completed the plants.

The New Departure Manufacturing Company

In 1907 a combination was formed among the manufacturers of bicycle and motor-cycle brakes and accessories, which in several respects resembled the "Bath Tub Pool." The formal organization was the "Association of Coaster Brake Licenses," consisting of the New Departure Manufacturing Company, five other corporations, and eighteen individuals.[74] The members of the association produced 85 percent of the output of bicycle and motor-cycle coaster brakes and accessories, and were able to control the price of such products.[75]

Various means were used by the association to make its price control effective. Among these may be mentioned:[76]

[73] Trust Laws and Unfair Competition, p. 493.
[74] 204 Fed. Rep. 107 et seq.
[75] Ibid., p. 109.
[76] Ibid., pp. 109-10.

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(1) the maintenance of fixed prices for the products; (2) establishing uniform and non-competitive discounts to manufacturers, dealers and jobbers; (3) selling all products only upon terms and conditions jointly agreed upon and using a uniform contract with all prospective buyers; (4) restricting the sale of products to manufacturers who dealt exclusively with the association members in the lines of products made by them; (5) instituting infringement suits and other legal processes against competitors; (6) fixing resale prices and discounts to jobbers; (7) devising a basic license agreement to bind the association members. Under the terms of the agreement the New Departure Manufacturing Company obtained control of all the patents held by the combination. The company acting as licensor made uniform agreements covering the use of these patents with the remaining companies. The royalties were largely discounted to all who faithfully observed the combination agreements. The license agreements were made to cover the manufacture and sale of parts not covered by the patents and each licensee was required to observe the sale prices and restrictions on sales to jobbers, retail dealers and customers, and also to deposit a guaranty fund to insure a faithful observance of the agreement.

In 1912, the Government secured an indictment against the members of the association charging unlawful combination and conspiracy with intent to monopolize and maintain prices in the coaster brake business. The defendants entered pleas of guilty and fines aggregating $81,500 were imposed in 1913.[77]

In 1912 the Government also filed a dissolution suit against the defendants in the preceding suit on the charge of entering into a conspiracy, combination and license agreement for the purpose of restraining and monopolizing the sale and manufacture of bicycle and motor-cycle parts and coaster brakes. Rather than meet the expense and almost inevitable result of a suit the defendants soon agreed to a consent decree by the terms of which the combination was held to be illegal and the defendants were enjoined from continuing the conspiracy or participating in any manner in

[77] The Federal Antitrust Laws, Washington, 1916, p. 72.

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any similar organization; and from soliciting, arranging or confirming by mutual agreement or understanding any lists of manufacturers, or jobbers, or dealers with whom trade should or should not be carried on.[78]

The New York Cotton Speculators' Pool

The legality under the Sherman law of establishing a "corner" was decided by the Supreme Court in 1913.[79] The decision was given in a suit brought by the Government against James A. Patten and other cotton speculators who were charged with entering into an agreement to enhance abnormally the price of cotton by obtaining a corner on this commodity. The price of cotton is practically determined by transactions on the New York Cotton Exchange. The defendants in the suit secured a corner on cotton by purchasing on the exchange large quantities for future delivery, quantities far in excess of the amount available, and by withholding sales for a time they compelled the cotton manufacturers of the entire country to pay excessive prices for their raw material.

The Supreme Court held that the acts of the defendants impeded interstate commerce and came within the prohibitions of the antitrust laws.[80] While maintaining a corner might temporarily stimulate competition, the court decided that it thwarted the customary operation of the law of supply and demand and produced the same evils as the suppression of competition.

Mr. Patten plead guilty to the charge and was fined $1,000. The indictment was dismissed as to the other defendants, but a new indictment was soon returned against them, and later in the same year fines aggregating $18,000 were imposed.[81] The amount of the fines is insignificant in comparison with the profits usually obtained from a successful corner on a staple commodity and the penalty imposed will not act as a strong deterrent to securing other corners.

[78] Trust Laws and Unfair Competition, 1915, pp. 491, 716, 729.
[79] 226 U. S. 525.
[80] 226 U. S. 541-3.
[81] The Federal Antitrust Laws, Washington, 1916, pp. 82-3.

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CHAPTER VII

IMPORTANT CASES AWAITING SUPREME COURT DECISIONS

WHILE some of the cases discussed in previous pages are still pending before the courts as to certain features, there are other important cases pending whose main issues are now before the Supreme Court and whose final decisions will go far toward interpreting the prohibitions of the trust laws. The best known of these are the International Harvester Company and the United States Steel Corporation cases. Each of these companies is the leader in its respective industry, but in each case the degree of control is noteworthy in only a few of the many branches of the industry. Both have been characterized as "good trusts." Other important cases pending before the Supreme Court which will be considered are the Great Lakes Towing Company, Eastman Kodak Company, Motion Picture Patents Company, Keystone Watch Case Company, Corn Products Refining Company, Quaker Oats Company, and American Can Company. Early in January 1918, the Government secured permission from the Supreme Court to defer the argument on these large anti-trust suits pending until the following term of court. This action was taken on the ground that the Government might secure greater co-operation of the business and financial interests of the country in meeting the war needs of the hour.

The International Harvester Company [1]

The United States has long led the world in the production of agricultural implements, and since 1902 the most important concern in the industry has been the International

[1] Report of the Bureau of Corporations on the International Harvester Company, 1913. This report forms the chief source for the fol-

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Harvester Company. In that year the company was organized under the laws of New Jersey as a consolidation of the five principal manufacturers of harvesting machines in the United States, namely, the McCormick Harvesting Machine, Deering Harvester, Plano Manufacturing, Warder Bushnell and Glessner (makers of Champion brands and hereafter called the Champion company) and the Milwaukee Harvester companies. The combining companies manufactured about 85 percent of the total output of harvesting machines.[2] The other chief producers of harvesting machines were located in New York, far removed from the chief grain producing states, and their market was chiefly confined to the export trade and to the North Atlantic States.

Prior to 1902, the harvesting machine industry was generally subject to competitive conditions, and this was particularly true of the decade immediately preceding the consolidation.[3] However, the claim that the combination was justified because the combining companies were suffering from destructive competition is not supported by facts. The volume of their business had greatly increased and the rate of profit earned upon the capital invested was comparatively high. For the two largest, the McCormick and Deering companies, the profits were especially high just prior to the merger.[4] The primary motive for consolidation was to eliminate competition and thus to secure a dominant position in the trade.[5] Such a position was assured from the first since the combining companies produced or sold 90 percent of the binders, 81 percent of the mowers, 67 percent of the rakes, and probably 90 percent of the reapers and cornbinders.[6] A secondary motive for consolidating was to lower the costs of production. The issue of inflated securities was not attempted in any marked degree. The absence of this motive which is usually present in such cases is partly

lowing pages and will be referred to as Report of Bureau. Other sources are the Brief for the United States in the Supreme Court; 214 Fed. Rep. 987-1012.

[2] Report of Bureau, p. 69.
[3] Ibid., pp. 56-66.
[4] Ibid., p. 63.
[5] Ibid., pp. 69-70.
[6] Ibid., pp. 92-3.

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explained by the close ownership of the companies merged and partly by the condition of the stock-market which was already depressed by the issue of inflated stocks.

The International Harvester Company was organized with a capitalization of $120,000,000, all common stock.[7] Of this amount $60,000,000 was issued as the purchase price of the assets of the five companies, including the promoter's fee. The valuation of the assets, exclusive of good will, by the Bureau and the amount of stock issued as the purchase price of each company were as follows:[8]

Company	Valuation as Estimated by the Bureau	Stock Issued for Property and Services
Deering	$16,856,704	$21,314,554
McCormick	23,490,789	26,262,514
Plano	2,378,119	2,268,603
Champion	3,391,742	3,447,185
Milwaukee	3,000,000	3,000,000
Total	$49,117,356	$56,292,857
J. P. Morgan & Co. (promoter's fee)		2,957,142
Expense fund		749,999
Total	$49,117,356	$60,000,000

The remaining $60,000,000 of stock was sold for cash among the consolidating interests and the proceeds were used for working capital. Of the total capital stock, the McCormick interests received 42.6 percent and the Deering 34.4, giving a 77 percent stock control to these two companies.[9] A voting trust, formed as part of the consolidation agreement, gave the McCormick, Deering and Morgan interests equal voice in the management of the company, but the predominating influence appears to have been exerted by the Deering interests. The voting trust was maintained for ten years.[10] The leaders of the combining com-

[7] Report of Bureau, pp. 84-7.
[8] Ibid., p. 126.
[9] Ibid., pp. 86-7.
[10] 214 Fed. Rep. 991.

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panies became the officers and directors of the International.

From the time of organization up to 1913, the year of the Bureau's report, the business of the International was greatly extended in various ways: by the acquisition of both competing companies and those making non-competing products; by manufacturing new lines at old plants; by the construction of new factories at home and abroad for making both old and new lines of machinery; and by developing the production and manufacture of its raw materials. The extension of manufacture into numerous new lines, such as tilling implements, manure spreaders, farm wagons, gasoline engines, tractors, threshers, and cream separators, was directly furthered by the monopolistic control of the harvesting machine business.[11] In 1902 the International secretly purchased its largest competitor, the D. M. Osborne Company, for $3,365,000. Control of the Minnie Harvester Company was secured in the following year. In 1904 two other competitors in the manufacture of harvesting machines were acquired, the Aultman-Miller and Keystone companies. All of the above acquisitions were secretly made and for various periods they were operated nominally as independent companies. There was commercial advantage in appearing not to be associated with the International for many people were opposed to buying from the trust. The purchase of the Weber Wagon Company in 1904 and the Bettendorf Axle Company in 1905, followed by a large increase in their output, made the International one of the important manufacturers of farm wagons. The manufacture of manure spreaders was entered into in 1906 through the purchase of the J. S. Kemp Manufacturing Company. Later several contracts were secured for the marketing of plows and seeding machines made by other manufacturers.

In addition to new lines of manufacture acquired by purchase, others were developed at old and new plants. The harvesting machine business of the Milwaukee plant was transferred to the McCormick factory and the former took up the manufacture of gasoline engines in 1904, cream separators in 1905 and tractors in 1906. In a similar manner

[11] Report of Bureau, p. 19.

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the Plano factory transferred its harvesting machine business to the Deering plant and replaced this by the manufacture of manure spreaders in 1905 and of wagons in 1906. The Champion plant continued to make harvesters, and added hay machines in 1903, seeders in 1906, and spreaders in 1908. The St. Paul plant made only binder twine. The Osborne plant made harvesters, tilling implements and twine. The Akron plant made auto-wagons. The Keystone plant was used to make hay machines, binders, corn shellers, and binder twine. The most important new establishment was a large tractor plant erected near the McCormick works in Chicago, which commenced operations in 1910. Other factories were either built or purchased in the following countries: Canada, France, Russia, Germany and Sweden. Canada is the only foreign country in which binders are made by the International company.

The International Harvester Company acquired properties and plants to supply its raw materials. Among these were coal and iron properties, iron and steel plants, timberlands and saw mills, and facilities for securing both manila and sisal fiber used in the manufacture of binder twine. This policy of integration enabled the company to secure its chief supplies of raw materials at production cost instead of depending upon the open market. In addition, a number of short and relatively unimportant industrial railroads were acquired soon after the consolidation was effected. The Milwaukee Harvester Company, whose name was changed (1902) to the International Harvester Company of America, was made the sales company. It was favorably located in the agricultural belt and had numerous warehouses. It also possessed licenses to carry on its business in states of importance to the trust and its organization therefore furnished a good basis for the sales activities of the combination.

No increase in the capital stock attended the expansion of the business until 1910. In 1907 the company had divided its stock into equal parts of 7 percent preferred and common. In 1910 a $20,000,000 stock dividend was declared upon the common, raising the total capital stock to $140,-

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000,000. This was, however, not overcapitalization for the net assets in this year, exclusive of good will, were valued by the Bureau at $144,589,739.[12]

The monopolistic position of the combination in the manufacture and sale of harvesting machines is clearly shown in the following table compiled from the Bureau's report:[13]

PROPORTION OF AGRICULTURAL IMPLEMENTS MANUFACTURED BY THE INTERNATIONAL HARVESTER COMPANY

Name of Implement	1902	1903	1904	1905	1906	1907	1908	1909[14]	1910	1911
Binders	90.9	94.2	89.1	90.0	87.0	88.5	89.7	87.1	87.0	87.0
Mowers	82.5	87.7	82.1	84.1	79.0	81.6	82.1	80.7	77.7	76.7
Rakes	67.8	80.0	....	....	....	....	....	....	....	72.0
Tedders	....	....	52.6	....	....	....	....	73.2	....	....
Corn Harvesters	....	....	70.1	....	....	....	....	75.5	....	....
Disk Harrows	....	....	....	....	....	....	....	25.9	....	43.1
Spring-tooth Harrows	....	....	....	....	....	....	....	49.1	....	....
Wheeled Cultivators	....	....	....	....	....	....	....	11.5	....	....
Farm Wagons	....	....	....	....	....	....	....	13.0	13.3	15.0
Hay Stackers	....	....	....	....	....	....	....	24.2	....	....
Hay Loaders	....	....	....	....	....	....	....	20.8	....	....
Corn Shredders	....	....	....	....	....	....	....	55.7	....	....
Manure Spreaders	....	....	....	....	....	....	....	....	....	55.1
Binder Twine	....	....	....	....	....	....	....	55.1	....	62.7

PROPORTION OF CHIEF AGRICULTURAL IMPLEMENTS SOLD BY THE INTERNATIONAL HARVESTER COMPANY

Name of Implement	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911
Binders	....	96.3	94.7	93.2	90.7	92.2	91.2	90.5	88.4	87.2
Mowers	....	91.0	89.0	86.5	82.8	84.7	82.6	79.3	76.6	74.6
Rakes	....	....	....	....	....	....	....	....	....	68.0
Manure Spreaders	....	....	....	....	....	....	....	....	....	50.0
Corn Harvesters	....	....	....	....	....	....	....	....	....	91.7

In addition to the various harvesting machines, the position of the International is very secure in the manufacture of disk harows, spring tooth harrows, corn shredders, and manure spreaders. A much smaller control was obtained in haying tools. It is not possible to show conclu-

[12] Report of Bureau, p. 238.
[13] Ibid., pp. 178-88.
[14] The percentages of the newer lines for the year 1909 were determined by the Bureau from the census data of 1910.

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sively the position attained in the new lines since the census does not contain data for spreaders, cream separators, gas engines, tractors, and other less important lines of machinery. In the production of binder twine the company constantly maintained an important place; its proportion increased from 55 percent in 1909 to 62.7 in 1911, when the total output reached 128,700 tons.

The profits of the International have been computed by the Bureau for the years 1903-1911. The net earnings for the first years could not be precisely determined because the company kept no general balance sheet and refused to submit one until 1906. The reasons given were that the merger was formed without permitting the combining interests to know the book values under which their rivals came into the trust and that the publication of a balance sheet would arouse jealousies. However, the Bureau secured the data and determined the approximate earnings for those years. The rate of earnings was based upon the investment, exclusive of good will, at the beginning of each year. Reserves from earnings, which were allowed, are given below showing the net amount added to each reserve by the close of 1911 and the number of years in which each was accumulated:[15]

Depreciation, 1903–1911	$8,774,923
Special maintenance, 1906–1911	298,821
Collection expense, 1906–1911	1,000,000
Pension fund, 1908–1911	1,027,719
Fire insurance, 1905–1911	2,061,399
Industrial accidents, 1910–1911	512,500
Bad debts and contingent losses, 1903–1911	3,137,166

Some of the reserves, though allowed, were deemed excessive. The funds of the pension and accident insurance reserves were provided entirely by the company. These funds, together with other organized welfare projects and a profit sharing arrangement, are usually pointed out by the company as indicating its liberality toward its employees. The net earnings on the investment on this basis were:[16]

[15] Report of Bureau, pp. 221-233.
[16] Ibid., p. 238.

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1903.....0.73	1906.....6.74	1909.....13.43
1904.....5.34	1907.....7.31	1910.....12.77
1905.....7.01	1908.....8.73	1911.....11.51

The profits for the earlier years were not excessive, but for the years 1909 to 1911 inclusive, they were distinctly high, averaging 12.5 percent. However, the average profit does not show the real condition with respect to prices in a business which has a monopolistic control of only a portion of the kinds of commodities it manufactures. A better test is to determine the profits obtained from each line of product. The rate of profit, whether based upon sales or investment, for the highly monopolized lines, such as grain and corn harvesting machines, was much higher than the corresponding rates for the newer lines, such as wagons and manure spreaders, in which the company encountered a greater degree of competition.[17]

Both prices and margins were increased in the harvesting machine lines. With few exceptions prices in these lines were raised but once from 1903 to 1911, the six and seven foot binders $7.50 each in 1908; the eight foot binder $5.00 in 1907 and $10.00 additional in 1908; the corn binder $7.50 in 1908; the five foot mowers $2.50 in 1908; and the six foot mower $3.00 in 1908.[18] In 1908 a larger margin was obtained by making an extra charge for binder transports, by giving fewer tongue trucks, and by lowered selling expense.[19] The advances in price were attributed by the company to higher costs of production, but on the other hand in several of the lines in which severer competition prevailed prices were reduced. In 1912, there was a price reduction amounting to $5.00 for grain binders and to proportional amounts for other harvesting machines. This reduction was attributed by the company to lower costs of production, but it followed preparations of the Government for filing a bill against the company to dissolve it.[20] The retail prices of commodities sold abroad by the International were, with few

[17] Report of Bureau, pp. 340-4.
[18] Ibid., p. 254.
[19] Ibid., p. 250.
[20] Ibid., p. 254.

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exceptions, higher than the domestic retail prices. The Bureau found no noteworthy instances of lower prices abroad. In some instances it is true that sales below cost were found, but these appeared to be accounted for by abnormally high selling expense, aggressive competition, or other peculiar conditions.

The strength of the International Harvester Company has been attributed to three sources: its productive efficiency, its financial resources, and its methods of competition. The Bureau held that the productive efficiency resided chiefly in the low manufacturing costs, which were due mainly to the large output. This advantage was held to apply almost exclusively to harvesting machines. In no year from 1903 to 1911 did the output of any independent company exceed 12 percent of the output of grain binders or 16 percent of the mowers from the McCormick plants.[21] But the output of the Deering and McCormick plants in no year subsequent to the consolidation was larger than in the years prior to 1902.[22] The factory cost of binders for the company in 1910-11 was $56.32 as compared with $70.83 for the independents.[23] But this difference, though great, was no greater than between the factory cost of the company's own plants.[24] It will be agreed that the International was a merger of the best plants, but to prove that its monopolistic position resulted in greater productive efficiency it is necessary to show that its plants have greater efficiency since consolidating. Nowhere is there any evidence tending to show more efficient production. The iron and steel production carried on by the company proved to be profitable by supplying raw materials directly. The selling expense of the combination was much higher than for the independents because the former sought a large volume of sales without reducing prices to the consumer. The company's selling organization consisting of 92 general agencies, about 800 principal salesmen, from 850 to 1600 canvassers, and nearly 40,000 retail dealers, was expensive, but it was a powerful

[21] Report of Bureau, p. 257.
[22] Ibid., p. 258.
[23] Ibid., p. 262.
[24] Ibid., p. 263.

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means when used by a monopoly to sell its products and to secure a dominant position in other branches of the trade.

The second important source of power is its financial support. This came through the act of consolidation itself, which brought together the business and financial resources of nearly all the large harvesting machine companies. The promoters, the Morgan interests, and Mr. Rockefeller, father-in-law to one of the McCormicks, each contributed large financial aid.[25] One way in which the financial resources were used with telling effect was in extending unusually long terms of credit. Farmers and dealers were given credit frequently extending two and three years and sometimes longer. Such a policy aided greatly in selling machinery to farmers who generally were unable to pay cash. Competitors with small working capital were in this respect at a disadvantage. Exceptional resources are not objectionable, but if they are used in connection with a monopolistic control to insure domination over new lines they may become a public menace. In this case this advantage was secured largely through an act of combination alleged to be unlawful.

The third chief source of power through which the International not only protected its monopolistic position, but also extended its business rapidly into newer lines was in the use of improper methods of competition. Among the methods, regarded as objectionable by the Bureau, the manufacturers and the dealers, were:[26] (1) The maintenance of pretended competition in the earlier years. Many competitors were secretly purchased and operated as independent companies. This was of commercial advantage since many buyers were opposed to patronizing the International. (2) The common practice of allotting its desirable brands of harvesting machines so as to secure the co-operation of an undue proportion of the dealers. By limiting each dealer to only one brand of its machines, the company could monopolize the services of a large proportion of the desirable dealers in any locality. (3) The coercion of dealers to handle some lines of the company's machines exclusively under the pen-

[25] Report of Bureau, p. 163.
[26] Ibid., pp. 290-326.

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alty of having their contracts cancelled. (4) Full-line forcing, which required dealers to order additional lines of products as a condition of retaining the agency of some desirable make of harvesting machines. (5) The use of suggested price lists. Prior to 1905 the retail prices were stipulated in the contracts with the dealers. After that year, to avoid illegal price fixing, suggested price lists, either printed or oral, were frequently circulated among the dealers. While the dealer was not compelled to observe these prices it is generally believed that the suggested price lists served to prevent dealers making concessions in prices in certain lines. (6) The granting of special and discriminating prices and terms. Such a policy was practiced through local price regulation, unequal freight charges or through the grant of unusually good terms of credit. In the newer lines, such as harrows, wagons, spreaders, gasoline engines, local concessions in prices and terms were found in various parts of the country. Still more important was the practice of establishing over large areas unusually low prices, or of granting better terms of credit than were customary. This method of defeating competitors was possible because of the monopolistic profit derived from harvesting machines. (7) Misrepresentations by salesmen regarding competitors. The most important of these was the assertion that the purchasers of competing harvesting machines would be unable to secure repair parts, the implication being that competitors could not remain long in the business.

The International company has not resorted to grossly unfair methods so frequently as have some of the other well known industrial monopolies. The company denies that it has within recent years practiced the objectionable methods which it admits were used in the earlier years. The Bureau believed this claim was to some extent true, but the numerous complaints received with respect to conditions in recent years clearly convinced it that these objectionable methods had by no means been eliminated.[27] In the course of the Bureau's investigation concerning complaints against the methods employed by the company, its agents visited over

[27] Report of Bureau, p. 326.

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eight hundred retail dealers in about six hundred towns scattered throughout twenty-seven states. Securing statements as representative as possible, the results showed 25 percent favorable to the trust, 20 percent non-committal, 50 percent specifically unfavorable, and 5 percent unfavorable without specific complaint.[28] Normally a large proportion of dealers doing business with a large company will be favorably disposed towards it. The fact that 50 percent of the dealers made specific complaints against the methods of the company indicates good ground for complaint. The consideration of the chief sources of power of the International show that the company has not shared the advantages of combination with the consumer but used them to safeguard its monopolistic control and to extend its operations into new lines.

In April, 1912, the Government brought suit to dissolve the International Harvester Company, charging the acquisition and maintenance of a monopoly in harvesting and agricultural machinery and twine. Admittedly on account of this suit the company made a division of its plants and business.[29] In January, 1913, it organized the International Harvester Corporation of New Jersey, to which were transferred all the foreign plants and business of the company, together with all the domestic plants exclusively engaged in the manufacture of the so-called new lines of machinery. The capital stock of the Corporation was $70,000,000, of which $30,000,000 was preferred. The capital stock was exactly one-half of that of the parent company and was divided into the same proportions of preferred and common. In the following month the International Harvester Company reduced its capital stock to $70,000,000, of which $30,000,000 was preferred. The stockholders turned in their shares for cancellation and received in exchange new stock of one-half the amounts of preferred and common so turned in, together with equal amounts of preferred and common stock in the International Harvester Corporation. At the same time, the name of the old company was changed to the

[28] Report of Bureau, p. 291.
[29] Ibid., pp. 169 et seq.

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International Harvester Company of New Jersey. In the division, the companies claimed that the assets and liabilities were equally divided between them. The Bureau found the statements of the two companies too condensed to prove this claim. The domestic plants and properties conveyed to the Harvester Corporation included all the transportation companies and six manufacturing plants, the Akron, Newark Valley, Milwaukee, and the Plano, Tractor and Weber plants at Chicago. These plants manufactured gasoline and oil engines, tractors, auto-wagons, cream separators, wagons, manure spreaders, tilling and planting implements. Nothing was stated about discontinuing the manufacture of these or other new lines at certain other plants retained by the Harvester Company, or whether the International Harvester Company of America, the sales company, would be continued, or, if continued, whether its numerous warehouses and selling organizations would be attached to one of the companies or divided between them.

If this division was intended as a proposed plan of dissolution it was entirely unsatisfactory. Both the Bureau and the Government disapproved of it as such. The new companies represented all the interests of the old company, and the stock control remained in the same hands and in the same proportions as before. The one company, the Harvester Company of New Jersey, retained all the harvesting machine plants, thereby perpetuating, without the semblance of a division, the monopolistic position in this branch of the business.

The Government in its suit against the International Harvester Company and others obtained a decree of dissolution from the Circuit Court in 1914.[30] The court held that the International Harvester Company was from the beginning an illegal combination and that all the defendant subsidiary companies were parties to it. The decree ordered that "the entire combination and monopoly be dissolved, that the defendants have 90 days in which to report to the court a plan for the dissolution of the entire unlawful business into at least three substantially equal, separate,

[30] 214 Fed. Rep. 987-1012.

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distinct, and independent corporations, with wholly separate owners and stockholders." [31] The court retained further jurisdiction of the case. The defendants appealed to the Supreme Court where the case was argued early in 1915 and is still pending.

NOTE—Soon after the above decree was entered the Court modified it so that instead of requiring a division of the assets among three corporations it required that the division be "in such manner and into such number of parts of separate and distinct ownership as may be necessary to restore competitive conditions." During the summer of 1918 the defendants withdrew their appeal to the Supreme Court and asked that an order be given to carry the above decree into effect, and in accordance with the provisions of the decree they filed with the Court a plan for the division of the assets. On November 2, 1918, the Court entered the final decree in the case. It provided that the defendant corporations, the International Harvester Company (formerly of New Jersey) and the International Harvester Company of America, and the individual defendants and their agents should dispose of the harvesting machine lines made and sold by them under the trade names of "Osborne," "Milwaukee," and "Champion," respectively, together with all patterns, drawings, trade names, etc., pertaining to these three lines of machinery, and likewise to sell to the purchasers the "Champion" works and plants at Springfield, Ohio, and the "Osborne" works at Auburn, New York. The decree provided that the sale of these properties be made at fair and reasonable prices with approval and supervision of the Government or Court and to approved purchasers, none being defendants, who are responsible manufacturers of agricultural implements. Should the purchaser be a corporation none of the defendants were allowed to hold substantial stock interest in it. The defendants were prohibited from having more than one representative or agent in any city or town in the United States for the sale of harvesting machines or other agricultural implements. Fi-

[31] 214 Fed. Rep., p. 1001.

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nally, if eighteen months after the close of the present war these measures have not proved adequate, in the opinion of the Government, to restore competitive conditions in the industry the Government is to have the right to such further relief in the case as may be necessary. As a result of the withdrawal of the appeal by the defendants, the important issue of law raised by the Harvester case did not come before the Supreme Court for a decision.

The United States Steel Corporation [32]

Consolidation in the steel industry came later than in many others. The early nineties were unfavorable to large consolidations but in 1898 an active movement in that direction took place in the steel industry. Within three and one-half years this movement culminated in the organization of the United States Steel Corporation which brought about three-fifths of the steel and iron industry of the country under a single management.[33] This concentration in one of the most basic industries, including also the ownership of one of the most important national resources, iron ore, materially concerned the welfare of the whole people.

Three periods may be distinguished in the history of combination in this industry. The first period led up to 1898.[34] The steel industry during this period was characterized by the competition of many independent companies. Although there was a gradual tendency toward larger companies, both through expansion and combination, near the close of the period, the depressed business conditions did not greatly favor the organization of great corporations. The Illinois Steel Company, organized in 1889 with $18,000,000 of issued stock, was a consolidation of three previously competing steel concerns.[35] The Carnegie Steel Company, organized in 1892 with a capital stock of $25,000,000, was the

[32] Report of the Commissioner of Corporations on the Steel Industry, Parts I, II and III.
[33] Ibid., Part I, p. 63.
[34] Ibid., pp. 63-78.
[35] Ibid., pp. 63, 120.

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largest single company in the steel industry at this time.[36] All the plants of the latter company were near Pittsburg. It acquired several competing concerns and held a large interest in the H. C. Frick Coke Company, the largest company in the coke industry. The Colorado Fuel and Iron Company was organized in 1892 as a merger of the Colorado Fuel Company and the Colorado Coal and Iron Company. This company, with a capital stock of $18,000,000, was the only important concern in the industry at this time in the far west. The chief interest of the company was in coal mining although it has iron ore lands and a small steel plant. With these it entered into extensive steel operations in the late nineties. The Tennessee Coal, Iron and Railroad Company, beginning as a coal company in the early fifties, entered the iron business in 1881. It later acquired other important coal and iron interests which made it the leading company in the southern iron district. The Cambria Iron Company and the Bethlehem Iron Company were also distinguished by extensive operations before the close of the period.

Most of the above concerns were engaged chiefly in the production of the simpler and heavier forms of steel products, such as rails, plates, and beams, or of billets, slabs, bars and other kinds of semi-finished steel used in making the more elaborated steel products. They sold their output mainly to the manufacturers of the finished steel products, such as nails, wire, tin plate and tubes. Seven concerns in 1898 controlled no less than fifty percent of the total production of steel ingots, the chief form of crude steel derived from pig iron.[37] However, the concerns were owned independently and, despite the existence of some price agreements, active competition was the distinguishing feature of the industry.

In general the manufacture of finished products was distributed among a large number of small concerns, the big exception being the Consolidated Steel and Wire Company. Except where hindered by pools and price agreements, com-

[36] Report of Bureau, Part I, p. 64.
[37] Ibid., p. 65.

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petition was very active among the makers of finished products.[38] Similar conditions of scattered ownership and competition existed in the industry of iron mining.[39] Among the few large iron mining companies were the Minnesota Iron Company and the Lake Superior Consolidated Iron Mines. Each of these owned very valuable ore properties and railway facilities.

Integration in the steel industry, which became so prominent later, was comparatively rare in the early nineties. Each principal branch was largely under separate ownership and control. Iron mining was generally a business by itself and few steel companies held important ore lands or coal. Most of the coal used in the industry was produced under competitive conditions. Likewise nearly all the iron and steel companies depended upon separate concerns for the transportation of their products. The tendency toward integration was most marked in the east and south where iron and coal deposits were found near each other. The Illinois steel interests acquired considerable coking coal land in Pennsylvania and extensive interests in iron ore deposits and ore railroads and vessels in the lake region.[40] The Carnegie Company, through the H. C. Frick Coke Company, held enormous reserves of coke and coal but owned very little ore land, and during the early nineties depended almost wholly upon others for its supply of ore. Near the close of this period the Carnegie Company completely reversed its policy as to owning ore lands. The far reaching effect of this change will be noted later. Integration, therefore, during the early nineties was not highly developed and was limited to a few of the larger concerns.

Although competition was the dominating feature in the iron and steel industry during this period, pooling agreements were repeatedly entered into. Many of these were of short duration and ineffective. The steel rail pool, wire nail pool, billet pool, and ore pool were examples. Of these by far the most important was the steel rail pool, formed in

[38] Report of Bureau, Part I, pp. 65-6.
[39] Ibid., p. 66.
[40] Ibid., p. 67.

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1887. The manufacturers of more than 90 percent of the country's output of steel rails entered into an agreement by which their combined output was to be controlled and allotted to each party upon an agreed percentage basis.[41] The pool was well organized and advanced the price of steel rails to $28 per ton. The large investment required for the production of steel rails helped to maintain this pool by discouraging the rise of competitors. The agreement was broken in 1893 but was quickly renewed. In 1897 it again collapsed, causing steel rails to sell freely at from $20 to $15 per ton.[42]

The wire-nail pool of 1895 included a large portion of the manufacturers of wire and cut nails. The pool immediately advanced prices and in less than a year the base price had risen from $1.20 per keg to $2.55.[43] The excessive prices tempted competitors to enter the trade, especially since only a small investment was required, and as a result the nail pool collapsed after eighteen months of existence. The steel-billet pool likewise ended after eight months of stormy existence. The latter failed to include several large manufacturers of billets. The ore pool also had a stormy career and owing to important changes in the ore industry was forced to lower its standard price from $4 to $2.75 per ton.[44] Similar to the above pools were the structural steel and the cast-iron pipe pools. The latter was national in scope and was later dissolved by a decree of the Supreme Court.[45] Other pool agreements were present in nearly every branch of the iron and steel industry.[46] Notwithstanding these repeated efforts to combine, competition remained the dominant feature of the iron and steel industry in the middle nineties.

The second period in the history of combination in the steel industry was very short, extending from 1898 to 1900. This period was characterized by an active movement toward

[41] Report of Bureau, Part I, pp. 69-73.
[42] Ibid., p. 72.
[43] Ibid., p. 73.
[44] Ibid., p. 74.
[45] 175 U. S., 211.
[46] Report of Bureau, Part I, p. 75.

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combination in nearly every branch of the iron and steel industry. As a result, the great and rapidly growing industry was largely concentrated in the hands of relatively few concerns, and the manufacture of distinct lines of products was frequently monopolized by a single concern. Three underlying causes of consolidation were present—the restriction of competition, the advantages of integration, and the profits to be derived from inflated securities.[47] The restriction of competition was the strongest motive. The various pools had shown what profits could be gained by concerted action, but it was found impossible to maintain the pools for any great length of time, and therefore in 1896 and 1897 there was a general abandonment of pools in the industry. The manufacturers sought more comprehensive and enduring organizations for increasing their returns.

The advantages of integration exerted considerable influence. Integration, extending from the ownership and production of raw materials to the manufacture of the finished product, had already been introduced by several companies. Transportation and technical progress stimulated integration by making possible production on a larger scale. The combining and co-ordinating of successive stages of manufacture resulted in the saving of fuel for reheating the metal, of labor and time in moving or handling the material, and of waste through the better utilization of by-products. Integration also allowed the saving of profits paid to others for raw materials, as well as being advantageous in securing a ready supply of such materials. An impetus toward integration and consolidation was given by the changed policy of the Carnegie Company respecting the ownership of iron ore. In 1896 this company, which had been almost wholly dependent upon others for its ore and transportation, made a fifty-year contract with the Lake Superior Consolidated Iron Mines, controlled by the Rockefeller interests, leasing large ore properties at a royalty of 25 cents per ton.[48] The contract provided that the ore should be transported on railroads and vessels controlled by the Rockefeller interests.

[47] Report of Bureau, Part I, pp. 75-9, 82-5.
[48] Ibid., pp. 76-8.

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News of this transaction caused a demoralization in the ore industry, the price of ore declining from $4 to $2.50 per ton.[49] The Carnegie interests, taking advantage of this situation, soon acquired through other leases a large reserve tonnage in the lake region. The acquisition by this company of coal and ore for years to come aroused other large iron and steel concerns who felt compelled to follow the same policy in order to effect the same saving and to be assured of future supplies on an equal basis. As a result the bulk of the ore deposits of the lake region was soon under the control of less than a dozen interests. The best coking coal fields of the east were leased, largely by the same interests, with almost equal rapidity.

The third cause of the consolidation movement was the effort both by the manufacturers who took stock in the new organization and by the promoters, to secure profits from the sale of inflated securities. Large profits in the industry followed the return of general prosperity and the demand for securities was good. Each consolidation or reorganization was attended with the issue of additional securities. Usually the securities were doubled in amount and the promoter's commission was excessive.

The formation of large consolidations began in 1898. These combinations, with capitalizations ranging from $30,000,000 to $100,000,000, were usually mergers of many smaller companies. One of the earliest was the Federal Steel Company with $100,000,000 of issued stock.[50] This was a merger of the Illinois Steel Company, the Minnesota Iron Company, and several other companies, including valuable transportation interest. The aim of the consolidation was to become independent as far as possible in respect to ore, fuel, transportation, and manufacturing facilities. It controlled 15 percent of the total ingot production.[51] The National Steel Company, formed by the Moore interests in 1899 with $58,000,000 of issued stock, united a number of competing manufacturers of crude and heavy steel products, and acquired other valuable ore and transportation inter-

[49] Report of Bureau, Part I, p. 77.
[50] Ibid., pp. 87-9.
[51] Ibid., p. 88.

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ests. The Moore interests also organized three other companies, as noted below, which manufactured more finished products. They purchased their raw material from the National Steel which produced 12 percent of the ingot output.[52] In 1900 the Carnegie interests reorganized with a capitalization of $320,000,000, including bonds.[53] This company, which controlled 18 percent of the ingot production, was the largest single unit in the industry.[54] It was a close corporation, efficiently managed, and strongly financed, having reinvested much of its profits in the business. Its 40,000 acres of coking coal lands were among the company's most valuable assets, and it owned also valuable natural gas, iron ore, and transportation properties. It was perhaps the most integrated and independent steel company, although it depended largely upon the manufacturers of finished products for the sale of its output.

The three foregoing steel companies were by far the most important and strongly entrenched companies in the steel industry. They were known as the "primary group," or those making chiefly crude and heavy steel products. They together controlled 45 percent of the country's ingot production. Though highly integrated they were largely dependent for the sale of their products upon the manufacturers of more elaborated steel products who purchased the ingots as their raw materials.

Six consolidations were effected among the manufacturers of the lighter and more finished products, which were known as the "secondary group." The first among these was the American Tin Plate Company organized in 1898 by the Moore interests, with $46,325,000 of stock. It acquired thirty-nine different plants and obtained an almost complete monopoly of the tin plate business.[55] In the following year, the Moore interests organized the American Steel Hoop Company with $33,000,000 of stock, which acquired nine competing concerns. The next year the Moore interests organized the American Sheet Steel Company with $49,-

[52] Report of Bureau, Part I, p. 89.
[53] Ibid., pp. 85-7.
[54] Ibid., p. 87.
[55] Ibid., pp. 90-91.

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000,000 of stock. This company controlled 70 percent of the country's output of sheet steel.[56] All three companies were consolidations of competing concerns organized to restrict competition and to afford promoter's profits. The American Steel and Wire Company was organized in 1899 for the same reasons, with $90,000,000 of stock.[57] Its products were chiefly nails, plain and barbed wire, and fencing. The consolidation included all the wire manufacturers and effected what the nail pool had failed to do. The company immediately began to strengthen its position by acquiring ore, coal, and transportation properties. In the same year the National Tube Company was organized with $80,000,000 of stock. It was a merger of thirteen concerns controlling 75 percent of the output of iron and steel wrought tubing.[58] The company depended largely upon the Carnegie Company for its raw materials. The American Bridge Company completed the list of those known as the secondary group. This company, which issued $63,000,000 of stock, was a consolidation of previously competing concerns engaged in the production of steel used in the construction of bridges and buildings. It depended upon other steel concerns for its raw materials. Two other consolidations may be mentioned in this connection. The Shelby Steel Tube Company was a consolidation of manufacturers controlling 90 percent of the output of drawn or seamless tubing.[59] It was organized in 1900 with $15,000,000 of capital stock. The other was the Lake Superior Consolidated Iron Mines, which was organized prior to this period by the Rockefeller interests. At the close of the period, it had a capitalization of $29,400,000.[60] It did no manufacturing, but was important in the steel industry because of its vast ore reserve and ore-producing and transporting facilities.

All of the foregoing consolidations, including the primary and secondary groups, were subsequently brought together in the United States Steel Corporation. With two

[56] Report of Bureau, Part I, pp. 90-91.
[57] Ibid., pp. 91-92.
[58] Ibid., pp. 92-3.
[59] Ibid., p. 93.
[60] Ibid., pp. 93-4.

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exceptions, including the Carnegie Company, the consolidations were attended with large over-capitalization.[61] In nearly every case, the preferred stock issue alone covered the tangible assets. The stock commissions received by the promoters in seven of the consolidations reached a total of $63,306,811.[62]

There were other consolidations, as well as notable reorganizations and expansions, on the part of companies which did not enter the Steel Corporation. These were known as "outside" companies. Chief among these were the Republic Iron and Steel Company, Sloss-Sheffield Steel and Iron Company, Jones and Laughlins (Ltd.), Lackawanna Iron and Steel Company, Pennsylvania Steel Company, Cambria Iron Company, Colorado Fuel and Iron Company, and the Tennessee Coal, Iron and Railroad Company. The last company, capitalized at $25,000,000, held very extensive and valuable ore reserves.[63]

As a result of combinations, the manufacture of primary products was largely transferred to a relatively few large steel companies, chief among which were the Carnegie, Federal Steel, and National Steel companies. Likewise, the manufacture of many finished products was largely centered in another group of consolidations, each of which, with few exceptions, obtained a large degree of monopoly control in its respective lines. Chief among these were the Shelby Steel Tube Company and the six members of the "secondary group"—the American Steel and Wire, American Tin Plate, American Steel Hoop, American Sheet Steel, National Tube, and American Bridge companies. At first there was no direct competition between the two groups. The manufacturers of finished products purchased their raw materials from the manufacturers of primary products. This balanced interdependence of the two groups was of short duration.

One of the distinguishing features of the period was the progress of integration among the leading concerns. At first the manufacturers of primary products largely con-

[61] Report of Bureau, Part I, p. 166.
[62] Ibid., p. 179.
[63] Ibid., p. 96.

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fined their integration policy to the acquisition and operation of coal, ore, and transportation properties and remained dependent for the sale of their products upon the manufacturers of finished products. But the manufacturers of finished products also adopted the policy of integration. Instead of depending upon the primary group for their raw materials they began to reach back and link up the first processes of steel production. They began to acquire coal and ore properties and to produce their own crude steel. This brought about a crucial situation. If the manufacturers of the finished products produced their own raw material, the manufacturers of primary products which had greatly enlarged their capacity, and were thus threatened with the loss of their best customers, would be compelled to elaborate their primary products into more finished materials. This threat of direct and severe competition between the two groups unsettled the whole industry. It meant an enormous enlargement of the productive capacity, a capacity that would be almost sure to exceed for a while the normal consuming power of the country. It meant the breaking down of the extremely profitable quasi-monopolies already established in the production of certain products.

This was the situation in 1900. The "battle of the giants" seemed near. It was evident that the Carnegie Company was best fitted to meet a price war. This company had an old-established business and the most modern and efficient plants. It excelled in technical and commercial organization. Its securities were not in the market and its financial credit was equal to any emergency. A slackened activity in the steel trade made the situation more acute. The crisis was precipitated early in 1900 by the aggressive policy of the Carnegie Company which announced its intention of building plants for the manufacture of several lines of finished products. The way to a peaceful solution was determined largely by the financial conditions of the several companies.

Financially there were four important groups—the Morgan, Moore, Carnegie, and Rockefeller interests. The Morgan group included the Federal Steel, National Tube, and

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American Bridge companies. While this group had good financial support, the Morgan interests were at this time extensively committed in other lines of business and did not want war in the steel industry. The Carnegie and Rockefeller interests were ready for any emergency. But the Moore companies,—the National Steel, American Tin Plate, American Sheet Steel, and American Steel Hoop—were very heavily overcapitalized and suffered from speculative backing. The securities of these companies would have declined greatly in a steel trade war. Likewise, the American Steel and Wire Company had no special backing support. Hence, it was to the interest of most of these groups to avert a severe war in the industry by a merger of their big consolidations. This would keep up the large profits and would even stimulate speculative activity in the steel securities in the further interest of these promoters. Complete integration would make a "bull" argument. But no merger could be successful without including the Carnegie Company. Carnegie was willing to sell his interests at this time and he set his own price. Following brief negotiations conducted by J. P. Morgan and Company, the United States Steel Corporation was organized in April, 1901,[64] and it acquired at the time of organization or shortly thereafter the following concerns: Carnegie, Federal Steel, American Steel and Wire, National Steel, National Tube, American Steel Hoop, American Tin Plate, American Bridge, American Sheet Steel, Lake Superior Consolidated Iron Mines, Shelby Steel Tube, and Bessemer Steamship companies. These represented about 180 distinct concerns.[65]

The immediate cause of the consolidation was to prevent the threatened competitive struggle in the industry. The promoters tried to justify the organization on the grounds of economies of integration, but it is doubtful if this consideration had much influence. Many of the units entering the corporation were operating extensively and were sufficiently integrated to secure practically all the advantages therefrom. The profits to be derived from the sale of in-

[64] Report of Bureau, Part I, pp. 98 et seq.
[65] Ibid., p. 106-7, table 8.

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flated securities was undoubtedly an important consideration. Most of the previous consolidations had brought enormous returns to the promoters.[66] Here was an opportunity to do things on a larger scale. Prosperity was increasing and the demand for securities unabated.

For the properties received at its formation and shortly thereafter, plus $25,003,000 cash capital, together with underwriting services, the Steel Corporation issued the following securities:[67]

Preferred stock	$510,205,743
Common stock	508,227,394
Bonds	303,450,000
Total	$1,321,883,137
Add:	
Underlying bonds of constituent companies	59,091,657
Mortgage and purchase money obligation	21,872,023
Grand total	$1,402,846,817

Of these securities, the Carnegie Company received the entire issue of bonds and $188,556,160 of stock of which more than half was preferred, making $492,006,160 in all. Most of the companies had been previously overcapitalized, but the Steel Corporation increased the combined capitalization of the constituent companies by 47 percent.[68] The investment of the Corporation by departments was computed by the Bureau of Corporations as follows:[69]

Ore property	$100,000,000
Manufacturing plants including furnaces	250,000,000
Railroad, steamship and dock property	91,500,000
Coal and coke property	80,000,000
Natural gas property	20,000,000
Limestone property	4,000,000
Cash and cash assets	136,500,000
Total	$682,000,000

[66] Report of Bureau, Part I, pp. 176-9.
[67] Ibid,. p. 112.
[68] Ibid., p. 113.
[69] Ibid., p. 36.

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Although the Bureau believed its valuation to be liberal in every case, the Corporation claimed a valuation of $1,457,000,000, or more than double.[70] The ore properties were valued by the Corporation at $700,000,000, while the Bureau claimed $100,000,000 was very liberal.[71] While the Corporation valued them at $700,000,000 to justify its capitalization, the valuation for purposes of taxation was probably much below $40,000,000.[72] The Corporation also included a "merger value," claiming that the combination and co-ordination of the properties increased their value, but since such value was almost wholly due to increased earnings resulting from the restriction of competition the Bureau almost wholly excluded it.

The enormous commission paid to the underwriting syndicate was another indication of excessive capitalization. For $25,000,000 in cash, together with services, the syndicate received from the Corporation $130,000,000 of its par value stock, half preferred, on which the syndicate realized a net profit of $62,500,000.[73] The Bureau claimed that the entire issue of common stock of $508,000,000 represented nothing but "water" and that about $200,000,000 of the preferred stock was unprotected by tangible assets.[74]

The Corporation did not secure a monopoly of the iron and steel industry as a whole. At its organization it secured control of about 60 percent of the steel business of the country.[75] Its real position was stronger than indicated by this figure because a large part of the production of "outside" companies did not involve competition with the Corporation. In a few branches the control of the Corporation was nearly complete at first, but in others there was competition from the beginning. Some of the outside companies were strong, efficient, and expanding concerns.

At first, the Corporation made no effort to acquire its chief competitors. However, near the close of 1902 it ac-

[70] Report of Bureau, Part I, p. 36.
[71] Ibid., pp. 35-6.
[72] Ibid., p. 36.
[73] Ibid., p. 38.
[74] Ibid.
[75] Ibid., p. 108.

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quired the Union Steel Company which represented a merger of a former company of the same name and the Sharon Steel Company. Both of these companies had strong financial support and were very aggressive competitors. Their union had scarcely been completed when the Corporation purchased the combined property by means of a guaranteed bond issue of $45,000,000.[76] Two years later the Corporation purchased the entire capital stock of the Clairton Steel Company for $13,710,565.[77] This concern had carried on extensive operations and held important ore and coal properties, but it lacked capital and at the time of purchase was in the hands of a receiver. The acquisition of several minor companies also occurred about this time. The most important addition occurred in 1907 when the Corporation purchased the Tennessee Coal, Iron and Railroad Company, which was dominant in the southern iron and steel district and had extensive manufacturing and transportation properties. Its production was approximately one-fifteenth of that of the entire Steel Corporation, but its most important assets consisted of enormous holdings of ore and coal properties. The estimated coal deposits of the company ranged from 285,000,000 to 1,397,300,000 tons, and ore deposits from 397,600,000 to 697,350,000 tons.[78] This property was acquired during the panic of 1907 for about $49,000,000.[79] The transaction gave the Corporation control of the southern iron and steel district. The fact that the Corporation leaders sought President Roosevelt's approval is significant in showing that there were fears as to the legality of the acquisition.[80]

The Corporation made many other additions to its enormous holdings of ore and coal properties. Many of these were secured on a royalty basis without the need of much cash. The most important ore lease, negotiated in 1911, covered 60 percent of the ore properties held by the Great Northern Railway system. The ore deposits involved in this

[76] Report of Bureau, Part I, p. 254.
[77] Ibid., p. 287.
[78] Ibid., p. 257.
[79] Ibid., p. 290.
[80] Brief for the United States, Part II, pp. 90-1.

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lease were generally estimated at from 400,000,000 to 500,000,000 tons while more liberal estimates nearly doubled these figures.[81] The two other ore leases gave control of deposits estimated at 70,000,000 and 100,000,000 tons, respectively. In a similar way the Corporation added to its large holdings of coal and coke properties. In 1901 it leased 50,000 acres of desirable coal lands. In its preliminary report for that year it was estimated that the corporation controlled "a sufficient quantity of the best and cheapest coking coal to provide, on the basis of present consumption, for the necessities of all the furnaces of these companies during the next sixty years."[82] The enormous coal and coke properties acquired through the purchase of the Union Steel, Clairton Steel, and Tennessee Coal, Iron and Railroad companies, as noted above, came after this year. In addition, 2,326 acres of coke land were secured in 1905, 640 acres in 1906, 500 in 1907, and extensive coal properties in Illinois and Indiana in 1909-10. In 1911 7,000 acres of improved and about 9,000 of unimproved coal land were acquired for $17,800,000.[83]

During the first decade the capacity of the Corporation was more than doubled.[84] This increase was due far more to new construction and additions than to the acquisition of competing concerns. The most important new construction was the well known Gary plant. This immense plant with the most modern equipment, together with real estate and railroad investment at this place, had cost, to the close of 1910, almost $70,000,000.[85] Other new construction involved an expenditure of about $10,000,000 for tube plants, several millions for beginning the erection of a large plant at Duluth, and a considerable sum for cement works controlled through the Universal Portland Cement Company. The capacity for cement production at the close of 1910 was about 8,050,000 barrels, not including new works under construction which would increase the capacity by one-half.[86] The

[81] Report of Bureau, Part I, pp. 260-3.
[82] Ibid., p. 263.
[83] Ibid., p. 264.
[84] Ibid., p. 269.
[85] Ibid., p. 265.
[86] Ibid., p. 269.

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development of the cement business was due to the increasing use of cement for construction which required structural steel. The Corporation also made a great number of less important extensions and improvements at various places, the aggregate cost of which was very large. Large investments were also made in transportation properties.

The various acquisitions, new construction, and additions, as noted, greatly increased the investment of the Corporation. The increase in the tangible property by departments was as follows:[87]

Description	Total Investment in 1901	Total Investment Dec. 31, 1910
Fixed property (exclusive of Gary plant and Tennessee Coal, Iron & R. R. Co.):		
Manufacturing	$250,000,000	$383,338,905
Iron ore	100,000,000	134,145,450
Coal and coke	80,000,000	98,425,982
Transportation	91,500,000	142,166,405
Miscellaneous	24,000,000	26,741,012
Other assets:		
Deferred charges	2,088,027	15,331,705
Investments	241,030	2,369,394
Sinking fund	239	16,067,905
Net current assets	134,224,089	235,907,633
Gary plant, including city and railway property	.....	69,978,695
Tennessee Coal, Iron and Railroad Company	.....	59,455,358
Sundry adjustments	.....	3,063,594
Total	$682,053,358	$1,186,982,038

This increase of $504,928,653 in tangible property was accompanied by an increase of only about $66,000,000 in the capitalization. As a result the "water" and intangible values, which exceeded the value of the tangible property in 1901, decreased from about $720,000,000 to nearly $281,-

[87] Reports of Bureau, Part I, p. 311.

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000,000.[88] The Corporation in 1910 claimed a total valuation which exceeded the capitalization of $1,468,000,000 by about $225,000,000, the latter amount appearing on the balance sheet in the form of surplus and reserves.[89]

The position of the Corporation in the steel industry is further shown by its percentage of the total output of various steel products. Although the Corporation greatly increased the volume of its business through the acquisition of competitors, new construction, enlargements, and modern equipment, it did not increase its percentage of the total output from 1901 to 1912, and in the case of many finished products its proportion declines. In the production of the cruder materials the Corporation maintained its relative position as is shown by the accompanying table.

The table shows that the Corporation increased slightly its percentage of the total production of iron ore. Its proportion averaged about 44.5 percent with remarkably slight annual fluctuations. However, the real position of the Corporation is not shown by these figures which are based upon the total output of the country because most of the ore used in the steel industry comes from the lake region and the Corporation controlled about 56 percent of the ore shipped from this region from 1901-1910. Of the ore produced by the Corporation in 1910, 92 percent came from the lake region, and in 1912 it produced over 70 percent of the 46,368,878 tons produced in this district.[90] In the production of coke the Corporation's proportion slightly declined, but here again the percentage of the total output is misleading because a large amount of coke is not suited to steel making and the Corporation's holdings included the best coking coal. The table also shows that the Corporation's percentage of the pig iron output fluctuated very little but tended to increase, reaching 47.7 percent in 1912.

It was chiefly in the production of crude and finished steel that the Corporation failed to hold its relative position against competitors. This is clearly brought out in the

[88] Report of Bureau, Part I, p. 324.
[89] Ibid., pp. 324-5.
[90] Brief for the United States, Part I, p. 379.

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PERCENTAGES OF THE TOTAL PRODUCTION OF IRON ORE, COKE, AND VARIOUS IRON AND STEEL PRODUCTS CONTROLLED BY THE UNITED STATES CORPORATION, YEARLY, 1901-1912.

	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911[91]	1912[91]
Iron ore:												
Production	43.9	45.1	43.8	37.9	43.4	43.2	43.3	46.3	45.7	44.2	45.8	47.9
Shipments from lake region	61.6	60.4	58.8	53.8	56.0	54.2	54.7	56.0	51.4	51.0	54.3	50.5
Pig iron	43.2	44.8	40.4	44.7	44.2	44.5	44.3	43.5	45.0	43.4	45.4	47.7
Coke	[92]	37.4	34.2	36.6	37.9	36.5	30.3	31.3	34.6	32.7	[92]	[92]
Ingots and castings	65.7	65.2	63.1	60.7	60.0	57.8	57.1	55.9	55.8	54.3	53.9	54.1
Rails	59.8	67.8	64.4	54.3	51.2	50.2	52.2	55.0	57.4	58.9	56.1	56.2
Structural shapes	62.2	57.9	60.3	55.1	54.6	54.6	54.9	47.1	47.0	51.3	47.0	49.8
Plates and sheets of all kinds	64.6	59.4	59.9	58.0	57.4	56.3	55.8	51.9	49.7	48.0	45.7	50.3
Black plate	79.8	70.7	77.6	71.5	67.9	70.4	69.1	67.6	60.0	52.9	[92]	60.6
Coated tin products	73.1	71.4	76.4	71.4	71.3	73.5	72.6	71.1	61.9	61.1	60.7	60.3
Black and coated sheets produced in sheet mills	67.3	58.1	51.4	52.8	58.4	52.7	50.6	41.3	40.7	38.9	[92]	[92]
Wire rods	77.7	71.6	73.1	71.5	69.9	71.7	71.5	67.9	69.7	67.3	64.7	63.2
Wire nails	68.1	64.8	71.6	68.2	67.4	65.2	69.4	67.6	60.9	55.5	51.4	49.3
Wrought pipes and tubes	57.2	53.0	54.6	51.1	54.0	52.4	53.3	47.4	43.7	38.2	[92]	[92]
Seamless tubes	82.8	72.3	64.1	64.1	60.8	65.5	66.4	66.3	61.0	55.3	[92]	[92]
Total of all finished rolled products (excludes pig iron and steel ingots and castings)	50.1	50.8	51.2	47.8	47.3	48.1	47.5	47.1	48.9	48.1	45.7	48.5

[91] Brief for the United States, Part II, pp. 390-5.
[92] Figures not available.

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table. The Corporation's proportion of the output of steel ingots and castings, which is the best single index of its position in steel manufacturing, declined steadily from 65.7 to 54.1 percent. This plainly shows the effect of the extended operations and aggressiveness of competitors. In the case of steel rails the percentage declined from 67.6 in 1902 to 50.2 in 1906, but rose steadily again to 58.9 percent in 1910. It is well to remember that steel rails represent the most important branch in the steel industry, at least so far as tonnage is concerned. In all the remaining classes of products listed in the table the Corporation's proportion had declined. These include lines of production in which the Corporation had a large degree of monopoly control in 1901. Its percentage of the total of all finished rolled products, which excludes pig iron and steel ingots and castings, fluctuated very little from 50 percent and declined none after 1903.

From the above statistics two important conclusions may be drawn. First, the Corporation has easily maintained its position with respect to the cruder materials—ore, coke, and pig iron. Second, in the case of crude steel and most leading steel products, except steel rails, it has not kept pace with its competitors. Thus, the largest and one of the best financed corporations of the world with all the advantages and economies of almost complete integration could not or did not retain its proportion of production and manufacture, although it always held more than one-half of the control in the industry as a whole and seemed to be holding its relative position during the last years shown in the table. Hence, one must look for evidence of monopoly in other than the production and manufacturing branches of the steel industry.

Upon the basis of capacity and the location of its plants the Corporation had a stronger position than its proportion of the production indicated. The Corporation produced less than its proportion of the output during periods of depression in order to maintain prices. During a period of keen competition the Corporation could increase its proportion of the total output and perhaps permanently eliminate some of its weaker competitors. The Corporation also had distinct advantages over its competitors in the distribution of

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its plants. Since it was dominant in nearly every important iron and steel district, the location of its plants gave an advantage with respect to transportation costs, both for raw materials and finished products. It also had a large advantage over its competitors through the ownership of transportation facilities. The tangible value of its transportation properties was over $142,000,000 in 1910, while no competitor had any large railroad property. It had the two leading railroads in the lake ore region and always controlled more than half of the ore shipments from this region.[93] The earnings from these roads, which arise chiefly from ore transportation, have been enormous. Though the cost of ore transportation has greatly declined, and the ratio of operating expenses to gross earnings is exceptionally low for these roads, the freight rates have not been lowered.[94] This not only brings large profits but also puts a burden upon competitors who are forced to ship over the roads. The Corporation also enjoyed important advantages through the ownership of the Elgin, Joliet and Eastern Railway and the Bessemer and Lake Erie. In water transportation it has large interests but was not so powerful.

While the Corporation did not secure a monopoly of coking coal property, it did secure a substantial monopoly of the best coking coal, the famous Connellsville deposit. Its proportion of the total production, which was about one-third, does not indicate its position with respect either to ownership or production of coal and coke for the steel industry because a large part of the total production is used for other purposes.[95]

Another evidence indicating monopoly on the part of the Corporation is in its ownership of ore properties. Its percentage of the ore production, which was 47.9 in 1912, does not indicate the extent of its ownership nor control which covers ores not needed for years to come. It is hard to determine the amount of ore controlled because no one knows the full extent of hidden ore in any known field nor when

[93] See p. 238.
[94] Report of Bureau, Part I, pp. 374-5.
[95] See p. 238.

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new ore fields may be discovered. But of the commercially available ores of the country in 1910 the Corporation's holdings greatly exceeded the combined holdings of all the other steel and iron interests, and were conservatively estimated at not less than 2,500,000,000 tons.[96] Moreover, the bulk of its holdings are of the best ores, those of the lake region, which form the basis of the steel production of the country. The Corporation controlled about 75 percent of the ore of this district through ownership and most of the balance by lease.[97] Its dominant position was further strengthened by the control of ore transportation from this district.

The Corporation monopolized the export trade.[98] Prior to 1901 steel exports were increasing rapidly, reaching over a million tons in 1900, nearly all of which were furnished by the companies later acquired by the trust. Following the formation of the Corporation the export trade declined sharply for several years. From 1904 to 1910 the annual volume of the trade remained near a million tons, but it began to increase rapidly in 1911 and exceeded two million tons in 1912. The Corporation controlled upwards of 90 percent of the export trade from 1901 to 1911, but this had been largely built up by the separate companies prior to 1901 and it is probable that the export trade would have been fully as large if the Corporation had never been formed. Moreover, from 1904 to 1911 the Corporation sold most of its heavier steel products abroad at prices decidedly lower than in the domestic markets.[99] For several years the difference on steel rails, which make up a large part of the tonnage, was over $6 a ton and for several years over $4. In 1904 most of the important exports were sold at average prices ranging from $4 to nearly $9 a ton below domestic prices.[100]

The Corporation was more successful in preventing price cutting than it was in restricting competition in production. Prices were advanced while plans for the Corporations were

[96] Report of Bureau, Part I, p. 381.
[97] Ibid., pp. 380-1.
[98] Brief for the United States, Part I, pp. 385-407.
[99] Ibid., p. 399.
[100] Ibid., p. 404.

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being arranged and were raised again soon after the organization was completed.[101] Not content to rely on the power derived from combination, the Corporation interests resorted to various devices to restrict competition in price. Among these were pools, agreements, contracts, and understandings. From 1900-1905 an association of manufacturers representing 75 percent of the steel plate output held meetings, usually monthly, under an agreement to fix prices, apportion sales, and maintain fixed rates.[102] A similar association existed up to 1905 among structural steel manufacturers representing 90 percent of the output.[103] Steel plate and structural steel made up about 20 percent of all steel products. These associations were able to raise prices and keep them constant for long periods. Nine similar associations existed among manufacturers of boiler tubes, steel shafting and pulley wheels, horseshoes, copper wire and rods, wire ropes, underground power cables, rubber insulated and lead encased wire, weatherproof and magnetic wire, and rubber covered wire.[104] Some of these pools continued until the Government filed its suit, but many were abandoned about 1904 when the Bureau began its investigation in the industry. After 1904 price control was secured through trade meetings attended by the representatives of the same organizations which had been members of the pools. Such trade meetings were frequent until 1907 when they were superseded by a new method of securing co-operation for the control of prices.

The control of price is shown also with steel rails. Soon after the formation of the Corporation, the price of standard Bessemer rails was advanced to $28 per ton at which price they remained constant for about fifteen years, regardless of the cost of production or demand.[105] The steel tonnage was apportioned and the price maintained through an understanding among the rail manufacturers. The Corporation declared that the fixed price was fair to the public

[101] Brief for the United States, Part II, pp. 442-5.
[102] Ibid., pp. 119-25.
[103] Ibid.
[104] Ibid., pp. 253-278.
[105] Ibid., p. 133.

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and that it gave stability to industry since the price was not raised in times of prosperity nor lowered in times of depression. But considering the long run demand the fixed price was the maximum price, and it cost the public more than if prices rose and fell with the demand, for the bulk of the buying would take place when the price was low. The Corporation could well afford to shut down in a time of depression and reduce the number of employees. Decreased production for the purpose of maintaining high prices is not advantageous to either labor or the public, especially in periods of depression.

After 1907, the control of prices and output was secured through numerous general meetings of the steel manufacturers, known as the "Gary dinners," and a system of committees established in connection with these dinners. The first Gary dinner took place in New York in 1907, at which were present manufacturers who controlled from 90 to 95 percent of the iron and steel trade.[106] In that year demoralization of the business was impending. As a result of the meeting a general committee headed by Mr. Gary, and nine sub-committees were appointed. Each of the sub-committees, which were appointed to deal with one or two principal lines of steel products, held meetings between the Gary dinners and the chairman was always available. The Corporation was represented on every committee along with its competitors whose co-operation was sought in controlling prices. The committee arrangement reached nearly all the manufacturers of iron and steel products, and made possible a common understanding and co-operation with outside companies to maintain one market price for the leading steel products. The Corporation, which controlled the larger part of the output of most of these products, set the price and was able to bring about the concerted action of most of its competitors. At these meetings or dinners no formal agreements were made, but those present made "declarations of purpose" [107] as to prices at which each proposed to sell. Each was expected to hold to such proposed

[106] Brief for the United States, Part II, p. 147.
[107] 223 Fed. Rep., 174.

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prices, or if he departed from them, was expected to notify his committee or dinner associates. They were informal pools, the binding force of which were verbal agreements and the fear of competition. The prices agreed upon at the Gary dinners were published in the trade journals and undoubtedly the publication of these prices helped to strengthen the force of the understanding.

From November 1907 to February 1909 the Corporation was very successful in fixing and maintaining prices.[108] Moreover, these were boom prices even though depression was in the country. In 1909 the price understandings were discontinued and in February the Corporation declared an open market for nearly all the leading steel products, except steel rails.[109] The Gary dinners were discontinued and the immediate result was much lower prices and greatly increased production. About May prices began to rise again. In October the Gary dinners were resumed and prices were soon raised to the old level and took on their former stability. The dinners continued to be held until January 1911, after which time there was decline and fluctuation in prices and greatly increased production.[110] In October the Government filed its suit against the Corporation. The boast of giving stability to the market and preventing extreme fluctuations is somewhat of an admission that prices were artificially controlled.

The Corporation followed other practices designed to control trade and prices, but it should be noted that the evidence was comparatively free of complaint on the part of competitors for the Corporation sought the co-operation of its competitors to maintain prices, and being dominant in most branches of the industry, it was able to secure concerted action. Local price cutting and railroad rebates which were such important factors in many combinations are scarcely mentioned. However, there were other undesirable practices. The acquisition of competitors has been sufficiently considered. Price cutting for the purpose of driving out com-

[108] Brief for the United States, Part II, pp. 238-242.
[109] Ibid., p. 200.
[110] 223 Fed. Rep. 81.

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petitors, while unusual, was practiced in some cases.[111] Rebates to control the trade of jobbers were at times put into effect.[112] The Corporation also maintained excessive prices on ore from the lake region and it sometimes purchased pig iron in the market for the purpose of keeping up the price and thus regulating the price of finished products. Another effective practice was the use of exclusive and preferential contracts. Long-term contracts were made with many of the largest purchasers of steel products under the terms of which the latter agreed to purchase all, or nearly all, of their steel products from the Corporation at a preferential rate. In this way the trade of many of the best customers was held even up to the filing of the Government's suit.[113] These preferential rates ranged as much as $6 per ton below the prevailing rates. The Corporation also wielded a tremendous influence through its system of interlocking directorates, which extended to almost all the great commercial and financial concerns in the country.[114] It is impossible to measure the quiet and constantly active influence exerted in this manner. In 1911 directors of the Corporation were represented on the boards of sixty-two railroad companies, and these companies were, of course, large purchasers of steel products.[115]

The dominant position of the Corporation was further shown by its profits. The rates of profit upon the real investment or tangible property of the Corporation were:[116]

1901.....14.8	1904..... 7.6	1908..... 7.8
1902.....15.9	1905.....12.9	1909.....10.5
1903.....11.7	1906.....15.1	1910.....10.7
	1907.....14.1	

Up to the close of 1910, the average rate of profit was 12 percent. The highest rate was reached in 1902, which was the first full year. With the exceptions of 1904 and

[111] Brief for the United States, Part II, pp. 353-4.
[113] Ibid., p. 337.
[112] Ibid., pp. 340-7.
[114] Ibid., pp. 285-95.
[115] Ibid., p. 287.
[116] Report of Bureau, Part I, p. 342.

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1908, years of pronounced depression, the rate was uniformly high, never falling below 10.5 percent. Even in these years the return of 7.6 and 7.8 percent was very reasonable. An average return of 12 percent on an investment exceeding a billion dollars and representing over half of the entire steel business of the country, as well as iron-ore mining, is far more significant than a similar return would be for a smaller concern whose investment risks are much greater. The 12 percent return also covered a large investment in unimproved ore reserves which were held for future appreciation and use. If the earnings were based upon capitalization instead of real investment the average rate of return would be 7.8 percent, but the capitalization was at first more than double the real investment.

When the profits derived from particular branches of the industry are considered, monopolistic control is more evident. The profits for the Corporation's ore companies in 1910 were 29 percent, thus showing unreasonably high ore prices which placed a burden upon its competitors.[117] Likewise, unusually large profits were obtained from the transportation of ore from the lake district. The returns were also high on the production of pig iron and heavy steel products. In 1910 the margins between the total net costs and average proceeds per ton were $7.95 for large Bessemer billets, $10.78 for Bessemer rails, $8.71 for plates, and $9.45 for structural shapes, giving a return on the estimated investment of 15, 16.5, 10.5, and 12 percent, respectively.[118] Some of the business was carried on at a rate much below 12 percent, and some perhaps at a rate that could not have been maintained except for the higher returns obtained in the more monopolized branches.

The Corporation's securities included a large amount of bonds having a fixed return, usually 5 percent. If the interest on these were deducted, the return upon the remaining investment would be considerably in excess of 12 percent. No doubt this was the chief motive for converting a large amount of preferred stock into bonds (1902-3). The total

[117] Report of Bureau, Part III, p. 10.
[118] Ibid.

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earnings accruing to the benefit of the stockholders from 1901 to 1910 were $816,430,854, of which $393,951,787 were actually paid in dividends.[119] Of the latter amount nearly one-third went to the common stockholders, and it should be remembered that the common stock at first represented nothing but water, while in addition, about $200,000,000 of the preferred stock had no tangible property back of it. At the close of 1910 about $440,000,000 of earnings had been reinvested in the business, which represented an equity accruing to the benefit of the stockholders. All of it, except in so far as the preferred stock had not been previously covered by real investment, represented a contribution to the common stockholders in addition to the dividends they received. That their equity increased accordingly is confirmed by the rise in the market price of the common stock which sold as high as $91 in 1910, and reached $129 in 1916.

In conclusion it may be said that competition in the steel industry existed as to production, but not as to prices. Competition as to price, at least up to 1911, was along levels and at figures agreed upon expressly or tacitly by pool agreements, trade meetings, or at general meetings, known as Gary dinners. In so far as the Corporation had a monopolistic control in the industry as a whole, it was chiefly due to its control of ore and ore transportation.

Public protest against the "Steel Trust," which had been growing stronger, became very pronounced when the Steel Corporation was formed in 1901. Although the Carnegie Company and many other consolidation companies formed between 1898 and 1900, which were later acquired by the Steel Corporation, were made the subject of Congressional investigation, no attempt to dissolve them was made until 1911. The Corporation itself was also the subject of Congressional investigation in 1905, but no suit was filed against it until 1911, although the Bureau of Corporations had been collecting data since 1905. In the meanwhile public hostility subsided, for the Steel Corporation did not antago-

[119] Report of Bureau, Part I, p. 345.

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nize the public and its competitors by using its power to crush competitors. It rather won the good will of its competitors by co-operating with them to maintain prices. It frequently made public its policies and sought official approval for its actions, constantly trying to justify itself in public opinion. As a result, the Steel Corporation came more and more to be regarded as a "good" trust.

The earliest antitrust action undertaken in this field was directed against certain pooling associations. In June 1911, separate indictments were returned against nine associations engaged in the manufacture and sale of bare copper wire, weatherproof and magnetic wire, rubber covered wire, fine magnetic wire, horse shoes, underground power cable, telephone cable, lead encased rubber insulated cable and wire rope.[120] The various defendants of these associations did not contest the action of the Government and fines aggregating approximately $128,700 were assessed.[121]

In October 1911, the Government filed a dissolution suit against the Steel Corporation and its chief subsidiary companies in the District Court of New Jersey. The effect of this action was noticeable at the time in business and financial circles, especially on the stock exchange. The charges of the Government included over-capitalization, control of prices and attempts at monopoly which were in violation of the Act of 1890.[122] The Government asked that the defendant companies be dissolved and enjoined from continuing certain practices. The evidence taken in the case filled thirty volumes, or over 12,000 printed pages. In June 1915, the District Court rendered a unanimous decree completely acquitting the defendants.[123] The public seemed to attach great importance to this decision and generally regarded the result favorably.

The first main conclusion of the Court was that the Steel Corporation was not prejudicing the public interests by unduly restricting competition or obstructing trade in the iron and steel industry, at home or abroad, at the time

[120] See p. 242.
[121] The Federal Antitrust Laws, 1916, pp. 67-8.
[122] 223 Fed. Rep. 55-179.
[123] Ibid.

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when the suit was filed in 1911.[124] The second was that the Corporation, in view of the intent of its promoters and the inherent nature of the combination, did not when it was formed in 1901 prejudice the public interest by unduly restricting competition or obstructing trade. A minority of the court declared that the organizers of the Corporation intended to create a monopoly and to restrain trade, and that they combined with others to monopolize trade within the meaning of the Sherman law, but that the Corporation itself neither attempted to nor possessed the power to carry out successfully the unlawful ends intended by its organizers. It held also that the Corporation had unlawfully combined with others to restrain trade by controlling prices.[125] The fact that the corporation was not holding its proportion of the growing trade against its competitors and was not using oppressive methods against them seemed to be the basis for the conclusion that competition was not unduly restricted. The Court refused to consider mere bigness or size, holding that no size is forbidden by law so long as it was accomplished without undue restraint or obstruction of trade. Combination and co-operation in business was not condemned except where there was the intent and result of creating a monopoly, restricting trade, and enhancing prices. The Court did not find the defendants guilty of being unfair to their competitors, of exacting improper prices, of making inferior goods, of reducing wages, of acquiring plants for the purpose of dismantling them, or of having obtained a monopoly of ore and coal deposits. It did, however, condemn the "Gary dinners" and price controlling methods as being illegal agreements, but since these had been discontinued before the suit was filed, they were not considered in arriving at a decision.[126] A minority of the court believed that jurisdiction of the case should be retained for the purpose of restraining any price control that might be attempted in the future, and the Court expressed its willingness, upon request, to retain such jurisdiction.[127]

[124] 223 Fed. Rep. 97-114.
[125] 223 Fed. Rep. 178.
[126] 223 Fed. Rep. 160-1.
[127] Ibid., pp. 161; 178-9.

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The opinion of the Court did not throw much new light on the meaning of the Sherman Act, for the judges, while agreeing that no dissolution would be ordered, did not agree as to their reasons for such conclusion. The decision also failed to define what constitutes an illegal combination.

Appeal was taken by the Government to the Supreme Court, and the case was argued there in March 1917. Justices Brandeis and McReynolds did not participate because of previous connection with the case.

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CHAPTER VIII

OTHER CASES AWAITING DECISION

Great Lakes Towing Company

THE Great Lakes Towing Company was organized in 1899 by promoters who were heavily interested in the transportation of coal, oil and ore on the Great Lakes.[1] Before 1899 lake transportation was carried on by a large number of independent companies. The promoters of the combination secured the property and business of the local tug operators in fourteen of the principal ports on the Great Lakes, except Lake Ontario. One hundred and twenty tugs were acquired, the vendors agreeing not to reenter the business within five years. Contracts were entered into with several other tug owners to keep the latter out of the business, and wherever competition arose the combination lowered prices even to the losing point until it was eliminated.

In 1900, a system of exclusive contracts was put into effect for the tug and wrecking service at all the points covered by the company's tariffs.[2] Discounts ranging from 20 to 30 percent of the tariff rates were allowed to all who exclusively patronized the company. The contract rates were moreover guaranteed not to exceed the rates of competitors. By means of such contracts, the company obtained control of from 90 to 95 percent of the towing business.[3] Competition was impossible; loss at one point was made up by profit from others. Rate wars and rebates made the control more complete, so that from 1904 to 1913 the company had no real competition at any of the fourteen ports, and in the latter year it controlled 95 percent of the harbor

[1] 208 Fed. Rep., 734 et seq.
[2] Ibid., pp. 738-9.
[3] Ibid., p. 739.

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towing on the Great Lakes at these ports.[4] No other ports, except one, were attractive to the combination from a business point of view. The operations of the company proved profitable to its stockholders from the first.[5]

In 1910 a petition was filed to dissolve the combination of towing facilities on the Great Lakes, and early in 1913 a decision favorable to the Government was handed down by the Circuit Court.[6] The company was given thirty days to present a plan by which its services should be given for the equal benefit of all needing such facilities, and by which the rights of competitors should be safeguarded and the illegal practices should be eliminated. The plan presented by the defendants was not accepted and it was two years before a decree was entered.[7] The Court refused to dissolve the company, although admitting that it was a monopoly created by abnormal and unfair means. The decree enjoined, among other things, the following practices: granting concessions, discounts or rebates, regardless of the amount of the business; making rate wars, or cutting rates for the same kind and quality of service furnished by a competitor; making any rates more than 25 percent below the tariff rates; making a rate below the cost of service; making exclusive agreements; and refusing prompt and practicable service.[8]

The Government did not believe the decree gave adequate relief and has appealed to the Supreme Court where the case is pending.

The Eastman Kodak Company

The business of the Eastman Kodak Company was concentrated and directed by Mr. George Eastman, who entered the field in 1878 before the film roll system of photography was known, at a time when the trade was relatively small and chiefly confined to professional practice.[9] About that time

[4] 208 Fed. Rep. 739-40.
[5] Ibid., p. 744.
[6] Ibid., p. 733.
[7] 217 Fed. Rep. 657.
[8] Trust Laws and Unfair Competition, pp. 463, 468, 469, 479, 481, 486.
[9] 226 Fed. Rep. 66-81.

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numerous improvements began to be made in the photographic process which made it far less difficult and greatly increased the number of amateur photographers. One of the most important improvements was the film roll system of photography. The Eastman interests invented some of the new devices and acquired control of many others, including some of the most important, through purchase or litigation. Between 1895 and 1899 control was acquired of three important camera producers which, together with their patents and trade-marks, gave the Eastman interests control of a large part of the manufacture of roll film and film plate cameras and formed the nucleus for a dominant position in the industry. In 1898 the sales of the company amounted to about $2,000,000.[10]

During this same period the Eastman company secured control of the printing-out or developing paper upon which modern photography is dependent. The raw stock from which such paper is made must be free from metallic substances and until recently the trade was dependent for its raw stock upon two sources, one in France and one in Prussia, where the waters are free from metallic substances. The raw stock of paper from these two points was controlled by a foreign company, the General Paper Company. The Eastman interests proceeded to acquire control of the printing-out paper in this country and during 1898-9 a large number of domestic companies, controlling the manufacture of practically all the printing-out paper in the country, were acquired.[11] At the same time the Eastman company secured control of the raw stock of paper from abroad through contract with the General Paper Company, by which agreement the Eastman company received the exclusive sales right of such paper in the United States, Canada and Mexico.[12] Thus, the Eastman interests secured not only complete control of the raw stock of printing-out or developing paper used in North America, but also a control of the manufacture of developing paper in this country.

The company was then in a position to enforce restrictive

[10] 226 Fed. Rep. 71.
[11] Ibid.
[12] Ibid., pp. 71-3.

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contracts with the dealers in photographic supplies throughout the country.[13] As a result of these contracts the company sold 95 percent of the photographic paper purchased in 1901.[14] The company also continued to acquire competitors. Between 1902 and 1906 twenty competing companies were absorbed and their plants were dismantled and the business removed to the Eastman factory at Rochester, New York.[15] Such acquisitions were continued up to the filing of the Government's suit seven years later. In nearly every instance the purchase agreement contained restrictive covenants prohibiting the officers of the acquired company from reentering the business for periods ranging from five to twenty years.[16] The large sums paid for some of these competing concerns showed how great was the advantage in having them out of the way.[17]

This method of dealing with competitors was illustrated when the Artura printing-out or developing paper, though not entirely free from metallic substances, came rapidly into use about 1908. This paper was made by a company of the same name. The Eastman company met this competition by reducing prices on its paper and warning its dealers not to handle the Artura paper. After a time the Eastman company acquired the Artura Company for $1,250,000.[18] The officers of the latter agreed not to reenter the business for a period of twenty years. In order to drive out competitors the Eastman company also purchased many of the stock houses engaged in the sale of photographic supplies. The contracts imposed upon the dealers furnished a more effective means of destroying competitors. From 1899 to 1908 all Eastman supplies were sold to dealers under restrictive contracts fixing the sale prices and prohibiting the dealer from handling the goods of a competitor.[19] The control of important patents and of the photographic paper supply enabled the company to extend its restrictive agreements effec-

[13] 226 Fed. Rep., 76.
[14] Ibid., p. 74.
[15] Ibid., pp. 64, 75.
[16] Ibid., p. 75.
[17] Ibid., p. 79.
[18] Ibid., p. 76.
[19] Ibid., p. 76 ff.

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tively over unpatented supplies. The company limited the number of dealers in a given territory in order to induce dealers to enter the contracts. A more effective method of enforcing the contracts was to grant special discounts and extra profits to dealers who observed all the provisions of their agreements.[20] After 1908 the special discounts were superseded by "terms of sale" which provided for the exclusive sale of Eastman products at listed prices to approved purchasers, and a violation of the terms of sale on specified products gave the company the right to revoke the dealers' privilege to sell any of the company's products.[21]

Aided by the control of photographic paper, both raw and finished, the numerous acquisitions of competitors, accompanied by covenants restraining the vendors from reentering the business, and the imposition of restrictive contracts upon the dealers, the Eastman company was enabled, as late as 1913, to control from 75 to 80 percent of the entire trade in cameras, films, plates and photographic paper.[22] Among one hundred and forty-six stock houses it was found that 86 percent of the purchases were made from the Eastman company. The company also had exclusive contract to supply the Motion Picture Patent Company with all of its manufactured moving picture film, except an amount equal to 2.5 percent.[23]

The evidence of monopoly in this industry is further strengthened by a consideration of the profits obtained by the Eastman company, which for 1912 were $15,633,551 or 171 percent.[24] Moreover, this profit was made on sales amounting to only $24,763,407, thus showing an excessive margin between the cost of manufacture and the price paid by the consumer.[25]

A dissolution suit under the Sherman law was filed against the Eastman Kodak Company in 1913. The opinion of the District Court in 1915 was that the defendants had a mo-

[20] 226 Fed. Rep., 76.
[21] Ibid., p. 64.
[22] Ibid., p. 79.
[23] Ibid.
[24] Ibid., p. 76.
[25] Ibid., p. 76.

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nopoly which unduly and unreasonably restrained trade.[26] This court did not require a dissolution, but gave the defendants until November to present a plan of terminating the monopoly in photographic cameras, films, paper and plates. The company's plan which was presented did not provide for a separation of the business and it was therefore rejected by the court as not giving adequate relief. Early in 1916, an interlocutory decree was entered which enjoined the four individuals and the two corporate defendants from continuing any contracts, restraints of trade, terms of sale, or practices, which would maintain the monopoly.[27] The assets and business of the Eastman Kodak Company of New Jersey and the Eastman Kodak Company of New York were required to "be divided in such manner and into such number of parts of separate ownership as may be necessary to establish competitive conditions." [28] The defendants were given ninety days to present a plan for such a separation. An appeal from this decree was taken to the Supreme Court where the case is now pending.

It is unsafe to predict the attitude of the Supreme Court in regard to this dissolution decree, but in view of the way in which the Eastman control has been extended, maintained and misused, in order to wrest such enormous profits from the public for the benefit of a few individuals, it would seem that a dissolution based upon the above plan is not only desirable but also necessary if general competition is to be restored in the industry.

The Motion Picture Patents Company

The Motion Picture Patents Company was formed in 1908 by manufacturers and importers for the purpose of monopolizing the trade in films, cameras, projecting machines, and other accessories of the motion picture business, and also in order to insure the control of the entire motion picture business.[29] At that time there were scores of job-

[26] 226 Fed. Rep., 81.
[27] 230 Fed. Rep., 522.
[28] Ibid., p. 524-5.
[29] 225 Fed. Rep., 808-812.

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bers buying and distributing films and supplies to thousands of exhibitors throughout the country. The total investment in the business ran into millions and the business was expanding very rapidly. It was worth monopolizing. The combining interests controlled sixteen patents, ten of which were not important. The remaining six controlled films, cameras, the "Latham loop," and projecting cameras. The organization of 1908 took over these patents which were relied upon as a legal defense of the combination.

The first part of the plan was to unite by some agreement the manufacturers and importers of films so that they would act as a unit. To this end "lists of exchanges and of theaters were prepared, and no exchange was permitted to have the films, and no theatre to exhibit them, unless with the consent of all the defendants. The names of none appeared upon this list except such as bought all supplies from the defendants, and any who dealt otherwise were dropped. Every theatre was required to pay a royalty for the use of the projecting machine, even when the machine had been owned by the exhibitor before the combination was formed. The films passed into the possession of exchanges and exhibitors under an agreement which enabled the defendants to recall them at will. It is too clear for comment that the mere possession of the power here shown would make its assertion seldom necessary. It was, however, effectively exercised."[30] The combination also created a board to censor films, not purely for improving the character of the displays and the technique, but also to look after the control of the patents.[31] At first the company licensed one hundred and sixteen jobbers who helped to carry on its business, but in a short time it decided to do its own distributing and organized the General Film Company to take over the business of distribution.[32] Only one of the jobbers remained in its employ. As a result of these steps the combination was very successful in monopolizing the accessories of the motion picture business, and largely achieved a domi-

[30] 225 Fed. Rep., 209.
[31] Ibid., p 811.
[32] Ibid., p. 809.

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nation in the motion picture presentation itself, which, if unchecked, would ultimately have suppressed the writing or dramatic enactment of plays, except by authors and artists favored by the company.

In 1912, a petition was filed against the Motion Picture Patents Company to remove restraints imposed upon the trade and commerce in all machines and accessories pertaining to the motion picture art, and upon persons engaged in such trade. The Circuit Court entered a decision favorable to the Government in 1915,[33] and a decree early in 1916, granting the relief sought by the petition. The defendants have appealed to the Supreme Court where the case is now pending.

The Keystone Watch Case Company[34]

The business of manufacturing watches may be divided into two parts, the manufacture of cases, of which more than 90 percent are "filled," and the manufacture of watch movements.[35] The Keystone Watch Case Company was a combination which secured a substantial control of the business of manufacturing watch cases. The combination became well established in 1899 through the organization of the Keystone Watch Case Company which immediately acquired control of two other watch case companies and organized a third company which was operated as a bogus independent.

In 1900, the combination began the manufacture of watch movements by acquiring the entire stock of the New York Standard Watch Company, makers of low grade watch movements. This was followed by the acquisition of the United States Watch Company in 1901 and the E. Howard Clock Company in 1903. The watch movement of the latter was well known and popular. A new corporation, the E. Howard Watch Company, was organized to take over the latter two companies. The new corporation

[33] 225 Fed. Rep. 800.
[34] Stevens, W. S., The Keystone Watch Case Company, Quart. Jour. of Econ., V. 26, pp. 602-8; 218 Fed. Rep. 502-519.
[35] 218 Fed. Rep., 505.

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then began to manufacture, advertise and sell a high grade watch known as the E. Howard movement, which differed in many respects from the old genuine Howard watch. The combination also purchased the entire common stock of the Crescent Watch Case Company in 1903, an old concern which had previously acquired the entire business of the American Waltham Watch Company and the Bay State Watch Company. In the same year it purchased 42 per-cent of the stock of the American Watch Case Company of Toronto. The balance of the stock of the latter was held by the Elgin and Waltham Watch companies. The combination organized the Keystone-Crescent Watch Case Company to market the products of the American Watch Case Company, and it then proceeded to make contracts with the Elgin and Waltham companies, making the combination almost the exclusive foreign sales agency of the latter companies. Other less important concerns were acquired from time to time.

Prior to 1910, the operations of the combination through the Keystone company were largely secret. The separate companies and sales agencies were continued. Early in this year however, all of the assets of the various subsidiary companies were openly transferred to the Keystone Watch Case Company and at the same time a circular letter was sent to the jobbers throughout the country.[36] This contained: (1) a memorandum of prices that was sent to all the retail trade; (2) a memorandum of prices at which Boss, Crescent, Planet, Crown and Silveroid watch cases and Excelsior watches were to be billed in the future to agents, which prices were to be net and subject to a cash discount only; (3) notice that sales of the brands mentioned above would be at fixed prices, and that it was desired that sales by jobbers to retailers should be at fixed prices, subject to cash discount only; (4) a request that jobbers of goods under the above trade marks, and the Howard trade mark also, should not deal in watch cases of any competitor; (5) a promise of the exclusive agency to jobbers conforming voluntarily to the wishes of the company in the matter of

[36] Stevens, Quart. Jour. of Econ., V. 26, p. 607.

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sales; (6) a threat that the company would refuse to sell its goods to jobbers handling them in a manner regarded as detrimental to its interests; (7) the requirement that all advertisements of Keystone goods must be approved; (8) the announcement that Howard watches would be sold under terms of a license issued with each watch which required (a) that the movement should not be removed from its case or used in any other case, nor the case used for any other movement; (b) that the watch should not be sold to any one regarded as objectionable to the manufacturer, nor should license be removed from any box nor the box sold without the license; (c) and that retailers must not sell the watch at less than the fixed price. The license stated that the watch was covered by patents and that any violation of the above conditions would constitute an infringement which would result in prosecution. The circular letter was followed up by agents of the Keystone company who informed the jobbers that the terms set forth in the mildly worded epistle would be strictly enforced and that if the demands were not observed the jobbers might be denied the Keystone goods which constituted about fifty percent of those in the market.[37] This threat was influential in securing exclusive contracts from a large percentage of the jobbing houses.[38]

Another unfair method of suppressing competition practiced by the Keystone company was ruinous price cutting on inferior goods. The Philadelphia watch case works of the company were used to manufacture large quantities of inferior grade watch cases not labeled with any of the Keystone brands. These were sold regardless of cost for the sole purpose of driving out competitors. As a result of unfair methods the Keystone company forced out of the filled watch case business all its competitors except six who together did not control more than 20 percent of the watch case business, leaving the Keystone company 80 percent of this trade.[39]

The profits of the Keystone company indicate the

[37] 218 Fed. Rep., 503.
[38] Stevens, Quart. Jour. of Econ., V. 26, p. 607.
[39] Ibid.

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effective enforcement of its price policy. Aside from the amount of gold used, the cost of manufacturing similar sizes and patterns of watches is about the same. Yet in one instance the cost to the retail purchaser of a certain watch case was twice that of a similar case containing twenty cents worth of gold less.[40] The capital stock of the Keystone company was $8,000,000 in 1910, about half of which stock represented intangible assets. Nevertheless, the profits in that year amounted to fourteen percent on the entire capital stock.[41]

In 1911, the Government filed a suit to dissolve the Keystone company. The decree of the Circuit Court in 1915 was partly favorable to the Government.[42] It contained an injunction against the policy of boycott outlined in the circular letter which had never been withdrawn, as well as against the restriction on the retail sales of the Howard watch. Aside from these restrictions the court held that there was enough competition in the watch case business to warrant a refusal to dissolve the Keystone company. However, jurisdiction of the bill was retained lest future conditions "should make it desirable for the Government to ask for additional relief, even to the point of breaking up the defendant corporation."[43] From this decree both the Government and the defendants have appealed to the Supreme Court.

The Corn Products Refining Company[44]

Two of the chief products derived from corn are starch and glucose. Starch, which is used for mill, laundry, and food purposes, is sold both in bulk and in packages. Glucose is derived from starch through the use of hydrochloric acid. The commercial glucose is a water solution of various glucose sugars, neutral and non-crystallizable at all degrees of saturation. It contains 25 percent of true glucose and

[40] Stevens Quart. Jour. of Econ., V. 26, p. 602.
[41] Ibid. [42] 218 Fed. Rep. 502.
[43] Ibid., p. 519.
[44] Dewing, Corporate Promotions and Reorganizations, 1914, Harvard Economic Studies, V. 10, pp. 72 et seq.; 234 Fed. Rep. 964.

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is a wholesome almost chemically pure sugar. Owing to its cheapness and the property of dissolving nearly its own weight of cane sugar it forms the basis of candy manufacture and of all manufactured jellies, preserves, fillings and similar products. and also of imitation maple syrup and honey. When rightly utilized, it is a valuable food of great purity and cheapness. Grape sugar, which is solid glucose, is used in the brewing and tanning industries.

Combination in the production of starch appeared earlier than in the glucose industry. In 1890 there were twenty-three manufacturers of starch, all small and mainly in the middle west.[45] In that year twenty of the plants were acquired by the National Starch Manufacturing Company, a holding company with a capital stock of $10,500,000, organized to control the supply and prices in the starch industry.[46] The vendors agreed as part of the consideration not to reenter the trade for five years. This combination thus received control of between 75 and 80 percent of the entire starch business.[47] New competition developed during the next ten years and in 1900 a new holding company was organized, the National Starch Company, which acquired control of practically all the starch manufacture of the country, except that used by the glucose manufacturers in their business.[48] Competition again arose and in 1902 a large combination of both the starch and glucose industries was effected.

While the starch interests were being consolidated, combination also occurred in the glucose industry. Prior to 1884 little glucose was manufactured in this country on account of an almost universal prejudice against its use. In that year a federal investigating committee published a report asserting that glucose was wholesome, and as a result the demand for it immediately increased and a number of small factories were established in the middle west. Between 1885 and 1890 pools were formed among the companies, controlling from 45 to 65 percent of the output. Competition,

[45] 234 Fed. Rep. 968.
[46] Ibid., pp. 968-9.
[47] Ibid., p. 968.
[48] Ibid., p. 969.

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following the breaking up of the pool in 1890, led to local combination and by 1897 the entire industry was in the hands of seven producers, among which the Chicago Sugar Refining Company was the largest. During that year six of these companies, controlling 85 percent of the output, were acquired by the Glucose Sugar Refining Company which was organized for this purpose. The assets of the company amounted to about $7,500,000, against which over $37,000,000 in stock was issued.[49] Yet the preferred stock soon sold at $95 and the common at $52, yielding the promoters an immediate profit of fully $4,500,000.[50] After four years the stocks were selling at $109 and $62, respectively.

This combination, which raised the price of glucose to $1.60 per hundred pounds or nearly 60 percent, had three very prosperous years during which it paid over 21 percent on its real investment.[51] During the first year a rebate of 25 cents per hundred was given, payable at the end of six months to all customers who confined their purchases of glucose and sugar to the combination.[52] This policy created hostility on the part of the jobbing and candy trade and brought retaliation and increased competition. Competition was inevitable because glucose was a staple commodity and there were no patented processes to prevent any one with relatively small means from entering the trade. By the end of the fourth year the combination's control had been reduced at about 45 percent of the trade.[53] After announcing a deficit for the year the price of the stock fell with a crash.

To regain a dominant position a new consolidation was planned. The strongest competitor was the New York Glucose Company which was controlled by the Standard Oil group.[54] No combination could succeed without including this company. After securing 49 percent of its stock, and confidently expecting to get 2 percent more, the promoters

[49] Dewing, p. 79.
[50] Ibid., pp. 80-2.
[51] Ibid., p. 86.
[52] Ibid., p. 83.
[53] Ibid., p. 85.
[54] Ibid., p. 85.

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proceeded in 1902 to organize the Corn Products Company which took over the old combination and the Charles Pope Glucose, Illinois Sugar Refining, and National Starch companies. The $76,000,000 of capital stock of the new company was practically all given in exchange for the combining interests whose plants were not worth more than $12,000,000.[55] Yet the market value of the stock was over four times this amount.[56] The acquisition of the National Starch Company consolidated the control of the starch and glucose industries.

The Corn Products Company started with about 80 percent of the glucose refining capacity.[57] Its first year was prosperous, but after that year fires, high corn prices, inefficient management, reckless finance, and vigorous competition reduced the combination to sorry financial straits.[58] By 1905 its refining capacity was only about 46 percent of the total.[59] It never secured more than 49 percent of the stock of the New York Glucose Company, its strongest competitor, which in 1903 refused to co-operate and in the following year began to withhold all dividends on its stock. Inefficient plants, financial weakness and friction within the combination led to a reorganization in 1906, which was entirely dominated by the New York Glucose Company.[60] The new concern was the Corn Products Refining Company. The stockholders of the old combination surrendered one-third of their shares for the remaining 51 percent of the New York company and the assets of two other outside companies, and the management was also surrendered to the New York company.[61] The total assets of the combination were worth about $15,000,000, against which there were $9,494,360 in bonds, $30,000,000 of preferred and $50,000,000 of common stock.[62] Yet the stocks began selling

[55] Dewing, p. 94.
[56] Ibid., p. 95.
[57] Ibid., p. 95.
[58] Ibid., pp. 97-101.
[59] Ibid., p. 101.
[60] Ibid., p. 101.
[61] Ibid., p. 103.
[62] Ibid., p. 108.

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at $80 and $25 respectively, or at eight times their actual worth in the equities of the company.[63]

The Corn Products Refining Company started out with about 71 percent of the refining output, but its grinding capacity was equal to from 85 to 100 percent of the total grind.[64] Its actual grind of corn remained fairly constant from year to year, being slightly greater in 1906 than in 1913. In the latter year it was 32,500,000 bushels or 65 percent of the total.[65] The remaining 35 percent was divided among nine competitors, three of which were organized after 1906. Gains in actual grinding were consistently made by the independents. In the production of starch the company's percentage remained quite constant. It was about 64 percent in 1906, over 70 in 1907, 1910 and 1911, 67 in 1912, 63 in 1913, and 58 in 1914.[66] The figures for the latter year were affected by the war and high corn prices. In the production of glucose the company's percentage declined. It was about 57 percent in 1913 and 53 percent in 1914.[67] Its production of mixed syrup declined from 100 to about 88 percent in 1914.

The new management in its efficiency, conservative finance, and policy of expansion followed the methods of the Standard Oil Company. Control was extended into the candy business and other products. Every device which ingenuity could discover was employed to maintain the control of the industry.[68] A profit sharing plan was followed during the first four years, according to which each customer was to be repaid out of profits from 10 to 15 cents for every hundred pounds of glucose or grape sugar purchased from the combination, but these rebates, accumulating in any one year, were payable at the end of the following year, and then only on condition that the purchaser obtained none of these products from another producer.[69] This made it

[63] Dewing, p. 108.
[64] 234 Fed. Rep. 974.
[65] Ibid., pp. 994, 974.
[66] Ibid., p. 975.
[67] Ibid., p. 974.
[68] Ibid., pp. 977-1011.
[69] Ibid., pp. 979-80.

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difficult for independents to secure customers. Another device was the maintenance of bogus independents for the purpose of driving out competitors through price cutting. This means was used especially in securing a position in the candy business.[70] During 1910-11 prices of the main products were lowered greatly to drive out independents, the combination depending upon sales of package starch and glucose for its profits.[71] The trust had almost enough refining capacity to supply the demand and had almost complete control of grape sugar, hence it was in a position to carry out such a policy. In the early years railroad rebates were secured through excessive allowance for switching roads, but this was not long continued. The frequent dismantling of plants was largely in the interests of economy. The combination dominated the syrup trade in connection with its glucose control, partly by mixing syrups and selling all syrup under its most popular brands, chief among which was "Karo," without equal price differences. Efforts to fix prices and restrict production were the objects of the numerous recombinations.

In 1911, the Government filed a petition to dissolve the Corn Products Refining Company and in 1916 the Circuit Court entered a decree of dissolution.[72] The court held that the plants of the company were as large as the law of increasing returns demanded and that the inveterate, incorrigible and innate proclivity toward interfering with trade in this industry demanded more relief than the injunction gives. The defendants were given 120 days in which to file a plan of dissolution with the Federal Trade Commission which should act as a master in chancery. An appeal has been taken to the Supreme Court.

The Quaker Oats Company

The Quaker Oats Company is engaged in the business of milling, manufacturing and selling cereals, particularly rolled oats and its by-products. It is composed of various

[70] 234 Fed. Rep. pp. 980-85.
[71] Ibid., pp. 985-95.
[72] Ibid., p. 964.

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concerns, the acquisition of the American Cereal Company in 1906 being one of the important additions. In 1911, it produced about 55 percent of the rolled oats output of the country and sold about half of its output in package form under the brand "Quaker Oats." [73] The company always showed large profits but the Quaker brand lost some ground just prior to 1911. By far the largest competitor at that time was the Western Cereal Company which controlled from 15 to 20 percent of the rolled oats output and sold most of its output under the name of "Mother's Oats." [74] Just before 1911 the amount sold under this brand gained rapidly in volume but the company was running behind financially. In 1911 the latter company was acquired by the Quaker Oats Company whose earnings during the next five years were very large. In spite of two extra common stock dividends of 50 and 10 percent, and the regular 10 percent cash dividends on the common stock, the price of the latter rose rapidly from $206 to $363. Recently it was voted to increase the common from $7,500,000 and the preferred from $9,000,000, each to $15,000,000.

In 1913 the Government filed a suit against the Quaker Oats Company alleging that the purchase in 1911 constituted a combination to restrain and monopolize trade in oatmeal products and by-products. In March 1916, the Circuit Court decided the case adversely to the Government by a two to one vote, each of the judges writing an opinion.[75] An appeal has been taken to the Supreme Court.

The American Can Company [76]

The American Can Company, which was organized in 1901 during the great trust movement, was a speculative venture of the Moore, Reid and Leed interests.[77] Of the five promoters only one, Mr. E. Norton, was a can maker. At that time there were from 100 to 175 can makers who sold

[73] 232 Fed. Rep. 504.
[74] Ibid.
[75] 232 Fed. Rep. 499-508.
[76] 230 Fed. Rep. 859 et seq.
[77] Ibid., p. 867.

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all or some of the cans they made.[78] Their plants ranged from little shops to large factories, the Norton factory being the largest. The industry was growing rapidly on account of the increasing use of cans for packing various food products, and patented can making machinery had been developed.

The Moore interests through Mr. Norton readily secured options on can making plants and patents covering can-making machinery.[79] Many of the can makers had gone through price wars with the Nortons, and they feared the opposition of a large rival. They also regarded with dismay the connection between the new company and the American Tin Plate Company. The latter, which monopolized the tin plate industry of the country, had been recently organized by the Moore interests.[80] Being dependent upon the Tin Plate Company for their raw materials the can makers were easily forced into the combination through fear that unless they did submit there would be price discrimination as well as discrimination against them in deliveries of tin plate. They were also more easily induced to join because Norton had secured options on patents covering the best can-making machinery.

At the date of organization in 1901, the American Can Company acquired 95 plants for which it paid $23,500,000, but which were not worth over $8,500,000.[81] The promoters gave about $7,000,000 more in cash making a total of about $30,500,000, for which they received $78,000,000 of stock, half preferred, which was then worth in the market about $39,000,000.[82] The total stock was $88,000,000, half preferred. Within a short time 28 more plants were acquired, making 123 in all.[83] As a part of the consideration the vendors agreed not to reenter the business for fifteen years within a radius of 3,000 miles of Chicago. The company thus controlled from 90 to 95 percent of the tin can output,

[78] 230 Fed. Rep. 864.
[79] Ibid., p. 868-70.
[80] Ibid., pp. 868-70.
[81] Ibid., p. 873.
[82] Ibid.
[83] Ibid., p. 868.

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exclusive of supplies made by companies for their own use.[84] About three-fourths of its plants were dismantled before the close of 1903. The company also acquired control of the best can making machinery and for six years tried to close the machine shops to its competitors. For a few years it was practically impossible for competitors to secure modern automatic machinery, but the demand stimulated new inventions of good can making machinery.

Under the necessity of realizing large and quick profits, prices were immediately raised, but this increased competition and the company had no money to purchase new competitors. As a result prices were lowered, but were raised usually during the canning season.[85] After 1904 the practice of charging high prices was discontinued. From 1911 to 1913 prices of cans, making allowance for the cost of tin plate, were about the same as in 1897-9 although the cost of labor and machinery per unit had declined materially.[86] The company always set the standard prices for packing cans throughout the country, and these prices fluctuated little within the year, or from year to year.[87]

The Can company received material preferential rates on its purchases of tin plate. From 1902 to 1913 the company bought its tin plate from the American Tin Plate Company, a subsidiary of the Steel Corporation, under a contract by which it was to get the tin at a lower price than any other consumer. The advantage thus received during these years amounted to $9,000,000.[88] The contract was discontinued in 1913, just before the Government filed its suit, and the Government alleged that this action was taken in view of the impending suit.

The Can company continued to acquire competitors.[89] Ten were acquired between 1905 and 1909, some of them being operated as independents for many years. One of the most important acquisitions was the Sanitary Can Company

[84] 230 Fed. Rep. 868-9.
[85] Ibid., pp. 879-80.
[86] Ibid., p. 893.
[87] Ibid., p. 892.
[88] Ibid., pp. 884-5.
[89] Ibid., pp. 886-9.

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which had a business of about $2,000,000 in 1908. This concern had a patent liquid compound which could be used with machinery instead of solder to seal cans. Its sanitary cans were fast becoming popular, but its business expanding too rapidly, it felt the financial stress of 1907 and sold out to the Can company. The Government alleged that the latter used its control to exact higher prices for the sanitary cans, although it cost no more to make them.

The output of cans for sale controlled by the Can company declined from about 90 percent in 1901 to about 50 percent in 1913.[90] The independents supplied the balance. In that year about one-third of the output did not go upon the market but was made by establishments for their own use.[91] For some time prior to 1913 the company did not attempt in any pronounced way to further monopolize the business. It began to serve the trade through longer time contracts, by providing storage facilities, and by its methods of standardization. Its prices, methods, and existence were not condemned by customers or competitors at the time of the trial. In 1915 the company was operating about 35 factories which were favorably located throughout the country.

The earnings of the company upon the real value of its assets have been excessive, although at first the company was embarrassed because of 7 percent cumulative stocks amounting to several times the value of the assets. In 1915 the company had paid nearly all of the accumulated dividends on its $41,233,300 of preferred stock and had a surplus of $6,000,000.[92] The dividends paid would have averaged upwards of 20 percent on the actual value of the assets. Although the common stock of equal amount had received no dividends and represented only distant hopes when issued, it sold as high as $68.50 in 1916.

In 1913 the Government filed a petition to dissolve the company, charging a monopolization of the manufacture and sale of tin cans, and in 1916 the Circuit Court gave a de-

[90] 230 Fed. Rep. 898-9.
[91] Ibid.
[92] Moody's Manual, 1916, pp. 2041-2.

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cision in the case.[93] The record of the proceedings filled over 8,700 printed pages. The court held that the company in its organization and early methods was plainly illegal; but, that in view of its later fair methods and practices and of certain benefits to the trade arising from the combination, a dissolution was not conducive to the public interest. It likened the case to that of the Harvester company. The Court retained jurisdiction, but refrained from entering a final decree in the hope that before a final decree would be requested Congress would substitute some other method for dissolution to be applied when a single corporation absorbed a large part of the production in any one line. Later in the year the Government entered a motion to have the court dissolve the company. The Court shortly afterward entered a decree denying the petition for a dissolution, but retained jurisdiction in order to give further relief if the company should abuse its power.[94] The Government has appealed.

[93] 230 Fed. Rep. 859.
[94] 234 Fed. Rep. 1019.

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CHAPTER IX

OTHER DECREES AND DECISIONS UNDER THE TRUST LAWS

IT is the purpose of this chapter to give a brief statement of other decisions, decrees and judgments under the trust laws, which have not been noted in the preceding pages. A few of the more important actions brought by private parties are included among those instituted by the Government. The cases are grouped according to the commodity or service involved.

Union Labor

It is significant that the first important application of the Sherman law affected labor unions, an application perhaps least intended by the framers of the law because it was primarily enacted against capitalists. Elsewhere in this study it is shown that the labor unions have been expressly exempted from the operation of antitrust laws by recent trust legislation.

In 1893 a petition for a restraining injunction was filed against the Workingmen's Amalgamated Council of New Orleans, a combination of workmen, draymen, etc., who were interfering with the movement of traffic by threats and force to compel the employment of union men only. An injunction was immediately granted. In 1894 Mr. Debs and others, connected with the Pullman Car strike, were charged with conspiracy to obstruct the mails and interfere with interstate commerce. A restraining injunction was entered by the Circuit Court and was sustained by the Supreme Court.[1] Later in 1894 contempt proceedings were brought against Mr. Debs and others for disobeying the injunction. The defendants were found guilty and punished. In 1908 sev-

[1] 158 U. S. 564.

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eral indictments were returned against 72 laborers, charging a combination and conspiracy in restraint of trade and commerce.[2] Early in 1911 three of the defendants were found guilty and fines aggregating $110 were imposed. In 1911 several indictments were returned against members of the Longshoremen's Association for combining upon rules and requirements governing the employment of workmen loading vessels with lumber.[3] The defendants plead guilty and each was sentenced to four hours of confinement. In 1913 a petition was filed to enjoin several local unions of the International Brotherhood of Electrical Workers from interfering with the business of the Postal Telegraph Cable Company and an injunction was granted.[4]

Perhaps the best known labor union case under the trust laws is that of Loewe v. Lawlor, better known as the Danbury Hatters' case.[5] This suit was brought by Loewe, a manufacturer of hats, against the United Hatters of North America, a labor organization forming a part of the American Federation of Labor, to recover under the Sherman law treble damages for losses resulting from an attempt to force Loewe to employ only union labor in his factory. The unions had forced seventy of the eighty-two hat factories of the country to employ union labor. Following Loewe's refusal to unionize in 1901 the hatters' union in the factory went out on a strike and induced the American Federation of Labor to institute a boycott against Loewe and against all hats sold by the firm and against all dealers handling the hats. The boycott successfully prevented the firm from employing other competent labor and from selling its hats. The business was ruined and a loss of $80,000 was claimed. The case was contested before the courts for more than a decade.[6] It went to the Supreme Court three times and two jury trials were held. The plaintiffs were successful in both trials. The second trial, in 1912, resulted in a judgment for $252,130, being the amount of a trebled verdict, interest, costs and

[2] The Federal Antitrust Laws, 1916, p. 60.
[3] Ibid., p. 71.
[4] Ibid., p. 80.
[5] 208 U. S. 274-309; 235 U. S. 522; 209 Fed. Rep. 721.
[6] 209 Fed. Rep. 723.

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counsel fees.[7] The validity of this verdict was affirmed by the Supreme Court in 1915.[8] It is interesting to compare the amount of this judgment with the smaller fines imposed upon large industrial combinations.

Coal and Coal Products

In 1897 a petition was filed against the Coal Dealers' Association of California, charging a combination to maintain fixed prices.[9] A temporary injunction, later made permanent, was entered granting the relief sought. In 1899 a petition was filed against the Chesapeake and Ohio Fuel Company and others, to annul a contract and dissolve a combination between producers and shippers of coal in Ohio and West Virginia.[10] A decree dissolving the contract and combination was entered the following year. A petition was filed in 1911 against the Lake Shore and Michigan Southern and five other railroad companies and three coal companies, charging a combination to monopolize the production and transportation of bituminous coal in and from the Ohio and West Virginia fields.[11] In 1912 the Circuit Court ordered a dissolution, but it was not until 1914 that a final decree was entered by this court dissolving the combination in a manner largely in accord with the petition of the Government. In 1917 an indictment was returned against 109 coal companies and 65 individuals, charging a combination to raise prices of West Virginia coal. This action is pending.

Coal Products.—In 1913 a petition was filed against the American Coal Products Company, and others, charging a monopolization of the supply of coal tar and restraint of trade in the manufacture and sale of tarred roofing felts and other coal tar products. A consent decree was immediately entered.

[7] 209 Fed. Rep. 722-3.
[8] 235 U. S. 522.
[9] The Federal Antitrust Laws, 1916, p. 50.
[10] Ibid., p. 50.
[11] Ibid., p. 68; 203 Fed. Rep. 295.

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Foodstuffs and Produce

Salt.—A petition was filed in 1902 to enjoin the Federal Salt Company, and others, from combining to suppress competition in the manufacture and sale of salt in the western states.[12] A restraining injunction was entered the same year.

Meat.—An indictment returned in 1906 against an alleged combination in Arizona for controlling prices and restricting competition in the sale of meats resulted in a verdict of guilty as to one individual defendant, and a fine of $1,000 was collected.

Sugar.—The early history of the Sugar Trust and the failure of the Knight decision to condemn it in 1894 has been shown in previous pages. Since 1894 the American Sugar Refining Company and its controlled companies have retained a dominant position in the sugar refining industry, but its relative proportion of the business has not remained nearly so large as it was in that year. In 1909 an indictment was returned against the American Sugar Refining Company, and others, but the trial resulted in a verdict of disagreement in 1912.[13] In 1910 a petition was filed to dissolve the combination of the above defendants. After the taking of testimony for the case had been concluded, the court ordered the hearing to be postponed until the Supreme Court entered decisions in the Harvester and Steel cases. It is already twenty-three years since the Knight decision was handed down and it will probably be several years more before a final decision is reached in the present case.

Groceries.—A petition was filed in 1905 to dissolve the Nome Retail Grocers' Association of Alaska, which was charged with fixing prices and suppressing competition.[14] A consent decree was entered the following year dissolving the combination. In 1910 a petition was filed against the Southern Wholesale Grocers' Association, charging a com-

[12] The Federal Antitrust Laws, 1916, p. 51.
[13] Ibid., pp. 61, 65.
[14] Ibid., p. 52.

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bination to regulate the prices and the marketing of groceries.[15] This was a combination of wholesale dealers and jobbers and it used various unfair methods, including black lists. A decree was entered the following year enjoining the Association and its members from doing any of the acts complained of, including: boycotting of manufacturers selling to non-members; preventing sales to non-members; using threats or coercion; accepting rebates or bonuses from manufacturers for maintaining prices; conspiring to raise or fix prices; entering into any agreements which interfere with the free flow of commerce.[16] The Association was allowed to continue for social and other purposes not enjoined. In 1913 the Association and three individual members were held guilty of contempt of court through violation of the terms of the above decree and fines aggregating $5,500 were imposed.[17]

Butter and Eggs.—In 1910, a petition was filed against the Chicago Butter and Egg Board, charging it with arbitrarily fixing and controlling the sale prices of butter and eggs throughout a large section of the country.[18] A decree granting the relief sought was entered in 1914. In 1912, a petition was filed against the Elgin Board of Trade, representing the interests of a number of large centralizing concerns, charging a combination to restrain trade and arbitrarily fix prices of butter and butter fat throughout the country.[19] A decree granting the relief was entered without contest in 1914.

Rendering Materials.—Several indictments were returned in 1912 against John Reardon and Sons Company and the Consolidated Rendering Company, charging a monopolization of trade and commerce in rendering materials, such as tallow, and oleo oil.[20] In the following year the corporations were fined $8,000.

[15] The Federal Antitrust Laws, 1916, pp. 63, 78.
[16] Trust Laws and Unfair Competition, 1916, pp. 88, 490, 492, 715, 723.
[17] 207 Fed. Rep. 434.
[18] The Federal Antitrust Laws, 1916, pp. 63, 67.
[19] Ibid., p. 77.
[20] Ibid., p. 64.

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Milk.—Two indictments were returned in 1911 against Isaac Whiting and others, charging a combination to restrain trade in milk throughout the New England States.[21] Demurrer was overruled in 1914 and certain of the defendants entered pleas of no contest, but the case has been continued pending the disposition of the action against the remaining defendants.

Flour.—An indictment returned in the Circuit Court of Oklahoma in 1911 against the Hunter Milling Company, and others, charging a conspiracy to restrain trade in flour, resulted in a verdict of guilty and fines of $2,000 were imposed.[22]

Confections.—In 1912, a petition was filed against the Philadelphia Jobbing Confectioners' Association and others, charging restraint of commerce in candies and confections.[23] A consent decree was immediately entered enjoining the defendants, among other things, from: boycotting manufacturers who sell to non-members; preventing manufacturers from selling freely in the open market; publishing white or black lists; inducing manufacturers not to sell to retailers or dealers not members of the association.

Produce.—An indictment was returned in 1913 against Page and fourteen others of the Produce Merchants' Exchange, of Portland, charging an unlawful control of the purchase and sale of about 90 percent of the produce, fruit and vegetables shipped into the State of Oregon.[24] The defendants immediately plead guilty and fines of $8,450 were collected. A similar indictment was returned in 1914 against thirty-one commission merchants, charging a combination to fix prices arbitrarily for the sale of produce in the District of Columbia.[25] No contest was made and fines of $650 were imposed.

Grain.—In 1913, a petition was filed against the Board of Trade of the city of Chicago and others, charging that

[21] The Federal Antitrust Laws, 1916, pp. 66-7.
[22] Ibid., p. 69.
[23] Ibid., p. 77.
[24] Ibid., p. 78.
[25] Ibid., p. 86.

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the price of grain arriving at times when the Board is not in session was arbitrarily determined.[26] The Circuit Court entered a decree in 1915 in favor of the Government. The defendants have appealed to the Supreme Court.

Breakfast Food.—In 1912, a petition was filed against the Kellogg Toasted Corn Flake Company charging that the company's policy of fixing and enforcing resale prices on corn flakes tended to restrain and monopolize commerce in this product.[27] The Kellogg Company sold its flakes to jobbers at a uniform price of $2.50 per case of 36 cartons, and rigidly refused to sell to a jobber who failed to keep his agreement to sell at a fixed uniform price in each district, ranging from $2.75 upwards per case. To enforce fixed prices upon the retail dealers there was printed on each carton a statement that to retail at less than ten cents per package was a violation of the conditions of sale and an infringement on patent rights, subjecting the vendor to prosecution. The patent referred to was on the carton or package. The Circuit Court in 1915 declared this practice to be unlawful and held that the patent claims were used to evade the trust laws.[28] The Kellogg Company consented to a final decree enjoining the practice.

The Cream of Wheat Company, which manufactures the well-known breakfast food of that name, announced in 1913 its intention to refuse to sell to consumers, retailers, or chain and department stores, and to sell only to jobbers who did not ignore any request made by the company for its own benefit or for that of the trade at large or of customers. The company requested the jobbers and retail dealers to maintain the resale prices recommended by it. The price to jobbers was fixed at $4.10 per case of 36 cartons in less than carload lots, and $3.95 in carload lots. The jobbers were requested to resell at $4.50 per case and the retail dealers at 14 cents per package. The Great Atlantic and Pacific Tea Company, owning a large chain of retail stores, secured the concession of buying at wholesale rates

[26] The Federal Antitrust Laws, 1916, p. 79.
[27] Ibid., p. 82.
[28] 229 Fed. Rep. 725.

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with the understanding that it observe the 14 cent resale rate. In 1915, the Tea company reduced the resale rate in certain of its stores to 12 cents. Thereupon, the company refused to sell to the Tea company and requested its agents not to sell to the Tea company at any price. The Cream of Wheat Company was not able to prevent all sales to the Tea company, but the latter could not secure carload rates from the jobbers and hence could not sell at a 12 cent rate. The Tea company sought an injunction under the terms of the Clayton Act on the ground that the discrimination of the Cream of Wheat Company and its attempt to induce the jobbers to discriminate constituted a violation of the Sherman law and unlawful discrimination under the Clayton Act. Both of the lower courts [29] denied an injunction and the case has gone back to the Circuit Court for trial.

Lumber and Its Products

Lumber.—An indictment was returned in 1906 against the F. A. Amsden Lumber Company, and others, for restricting competition and fixing prices in the sale of lumber.[30] In the following year pleas of guilty were entered and fines aggregating $2,000 were collected. In 1911, a petition was filed against the Eastern States Retail Lumber Dealers Association, alleging a conspiracy to restrain trade through the use of black lists and trade agreements.[31] The object of these lists, known as Official Reports, was to discourage wholesalers and jobbers from selling directly to consumers by threatening to boycott those who did. The Circuit Court, in 1913, enjoined the use of any such lists and agreements. This decree was affirmed by the Supreme Court in 1914.[32] Several other petitions which are still pending were filed in 1911 against wholesale and retail dealers' associations, alleging restraint of trade in lumber and its products.[33]

[29] 224 Fed. Rep. 566; 227 Fed. Rep. 46.
[30] The Federal Antitrust Laws, 1916, p. 53.
[31] Ibid., p. 66.
[32] 234 U. S. 600.
[33] The Federal Antitrust Laws, 1916, pp. 69, 70.

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Turpentine.—In 1907, the Atlantic Investment Company and three other corporations were indicted for maintaining a combination in restraint of trade and commerce in the manufacture and sale of turpentine.[34] In the same year pleas of guilty were entered and fines aggregating $30,000 were imposed.

Furniture.—In 1907, an indictment was returned against the American Seating Company, and other corporations, charging a combination to restrain trade in the manufacture and sale of school and church furniture.[35] The defendant corporations, with one exception, entered pleas of guilty and fines aggregating $43,000 were collected. At the same time a civil suit was brought against the above defendants. No contest was made and a decree granting relief was entered.

Shingles.—In 1902 the Circuit Court of Appeals declared illegal an association of manufacturers and dealers in red-cedar shingles formed in Washington. This was the only state producing such shingles and more than 80 percent of the output was sold and delivered in other states. The association limited the output and fixed the price of sale. A dealer brought suit under the Sherman law to recover damages sustained from the acts of the association. On appeal the Court held the association to be an illegal combination and permitted action to recover.

Paper and Publishing Supplies

Paper.—In 1904, a petition was filed against the General Paper Company and twenty-three other corporations engaged in the manufacture and sale of paper, alleging a conspiracy to restrain trade and commerce.[36] In 1906, a decree was entered dissolving the combination and granting relief through injunction. In 1908 an indictment was returned against John H. Parks, and others, charging a combination to restrain trade in the manufacture and sale of

[34] The Federal Antitrust Laws, 1916, p. 58.
[35] Ibid.
[36] Ibid., p. 51.

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paper.[37] The defendants immediately plead guilty and fines aggregating $50,000 were collected. In 1909, a petition was filed against the Allen Brothers Company, and other paper manufacturers, charging a combination—the "F. and M. Association"—to restrain trade and commerce in the manufacture, sale and distribution of fibre, manila and other papers.[38] A decree dissolving the association and enjoining the members from continuing in it was entered in the same year. An indictment was also returned in that year against the Albia Box & Paper Company, and other manufacturers, for combining to restrain trade in paper board.[39] All the defendants plead guilty and fines aggregating $57,000 were collected. In 1911 another indictment was returned against the president of the company, and others, charging a combination and conspiracy to restrain commerce in paper board. No defense was made and fines aggregating $16,000 were imposed.

During 1916 the prices of newsprint paper were almost doubled and in some cases quadrupled.[40] The advance in prices led to an investigation by the Federal Trade Commission which found that there was no shortage but that certain paper manufacturers were attempting to secure large gains through a control over the supply. In March 1917, the Trade Commission accepted a proposal of the paper manufacturers to fix the price of newsprint paper, but this did not deter the Government from bringing action under the trust laws. In the following month an indictment was secured against seven men, five of whom were officials of the Newsprint Manufacturers Association, on the charge of combining to control the supply and price of newsprint paper.

Publishing Supplies.—In 1912, a petition was filed against the Central-West Publishing Company, and others, charging unfair competition with intent to restrain and monopolize trade and commerce in plate and ready-print pa-

[37] The Federal Antitrust Laws, 1916, p. 60.
[38] Ibid., p. 61.
[39] Ibid., pp. 61, 66.
[40] The Chronicle, V. 104, p. 1887.

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per.[41] Some of the unfair methods are shown by the consent decree entered the same year. This enjoined the defendants from defaming and disparaging competitors' goods and business; selling below cost or at discriminating prices and terms with intent to drive out competitors; operating bogus independents; using threats or inducing breach of contracts with competitors; retaining plate metal or other property belonging to competitors. In 1915 contempt proceedings were instituted for alleged violations of the above decree.

Wall Paper.—In 1909 the Supreme Court decided the case of the Continental Wall Paper Company. This company was the selling agency of a combination consisting of more than 30 manufacturers of wall paper and controlling 98 percent of such output and sales. It had perhaps the most complete monopoly possible of a commodity in general use and it greatly increased prices as soon as it was formed. Contracts which required exclusive dealing and which fixed the prices were forced on jobbers. The suit was brought against a jobber who refused payment on purchases made under such a contract on the ground that the contract was part of a combination in violation of the Sherman law. The Court held that the company could not recover.[42]

Miscellaneous Combinations

Elevators.—A petition filed in 1906 against the Otis Elevator Company and a number of other similar corporations resulted in a decree, without contest, enjoining the defendants from conspiring and combining to restrain trade in the manufacture and sale of elevators.[43]

Drugs.—A petition was filed in 1906 against the National Association of Retail Druggists, charging a combination in restraint of trade in the sale of drugs and proprietary medicines.[44] A consent decree granting the relief sought was entered the following year.

Umbrella Materials.—In 1907 the National Umbrella

[41] The Federal Antitrust Laws, 1916, pp. 75-6; Trust Laws and Unfair Competition, 1916, pp. 370, 479-81, 485, 492, 494-5.
[42] 212 U. S. 227.
[43] The Federal Antitrust Laws, 1916, p. 53.
[44] Ibid., p. 54.

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Frame Company, and others, plead guilty under an indictment charging a conspiracy to restrain trade and commerce in the manufacture and sale of umbrella materials.[45] Fines aggregating $3,000 were collected.

Tobacco.—In 1910, an indictment was returned against John S. Steers and eleven other individuals charging a conspiracy to restrain trade in tobacco.[46] This is known as the "Night Rider" case. In 1910 eight of the defendants were declared guilty and fines aggregating $3,500 were imposed. In 1912 the sentences were commuted by the President to payment of costs of suit.

Window Glass.—In 1910, an indictment was returned against the Imperial Window Glass Company, and others, charging a combination and conspiracy to enhance the price of window glass.[47] In the same year fines aggregating $10,000 were collected.

Bill Posters.—In 1912, a petition was filed against the Associated Bill Posters and Distributors of the United States and Canada, and others, charging a combination to restrain trade and commerce in posters.[48] The organization was composed of bill posters owning bill boards in several thousand of the most desirable towns throughout the country. It aimed to control this business and fix prices, and it agreed to exclude from its service and billboards all who did not exclusively deal with the organization in towns where it was represented. Seven or eight corporations and persons were given the exclusive right to solicit poster advertising and the members paid the solicitors one-sixth of the proceeds derived from the business brought to them and agreed to patronize no other solicitors. Penalties were provided for violating the agreements. As a result the combination acquired control of practically all the posting of national advertising in several thousand cities and towns. A decision favorable to the Government was entered by the Circuit Court in 1916, but the form of decree is still under consideration.

Magazines.—In 1911, a petition was filed against the

[45] The Federal Antitrust Laws, 1916, p. 57.
[46] Ibid., pp. 61, 62.
[47] Ibid., p. 62.
[48] 235, Fed. Rep. 540-2.

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Periodical Clearing House, and others, known as the Magazine Trust.[49] The Circuit Court trial resulted in an equally divided court and the case was ordered dismissed in 1913.

Jewelry.—In 1913, a petition was filed charging the National Wholesale Jewelers' Association, and others, with conspiring to eliminate all competition—except as between wholesalers and jobbers—for the trade of all classes of retail dealers of jewelry and its products.[50] The case was not contested and a decree was entered in the following year enjoining the defendants, among other things, from agreeing not to purchase from manufacturers who sold to jobbers, retail dealers, or others not recognized by the association; from preventing sales or purchases of jewelry by any one; from boycotting; and from using white or black lists.

Thread.—In 1913, a petition was filed to dissolve the combination monopolizing the thread industry. No contest was made by the defendants and in the following year a decree was entered dissolving the combination and enjoining the use of certain unfair methods of competition, among which were price cutting, either directly or through offering a bonus or gift in the form of free goods or samples, excepting samples given in good faith and not exceeding five percent of the amount of the purchases at any one time; price discrimination through secret rebates or other secret inducement; using fighting brands; enforcing exclusive contracts with jobbers or dealers; discriminating against any who handle the goods of a competitor; defaming and disparaging competitors or their goods; using any black lists stating with whom trade shall or shall not be carried on.[51]

Telephone Service.—In 1913, a petition was filed against the American Telephone and Telegraph Company, seeking to destroy a monopoly of the telephone business on the Pacific Coast.[52] After part of the testimony was taken the

[49] The Federal Antitrust Laws, 1916, p. 68.
[50] Ibid., p. 83; Trust Laws and Unfair Competition, 1916, pp. 489, 490, 492, 728.
[51] Trust Laws and Unfair Competition, 1916, pp. 479-492.
[52] The Federal Antitrust Laws, 1916, p. 83.

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defendants agreed to the demands of the Government. The company agreed to sell its large minority stock holdings in the Western Union Telegraph Company and to acquire no control of additional independent telephone properties, except under certain conditions, and to give independent companies toll rights over its long distance lines. The net profits of the company in 1915 amounted to about $48,000,000, or over twelve percent on its outstanding capital stock.

Wringers.—In 1914, an indictment was returned against the American Wringer Company, charging a combination to restrain trade and commerce in clothes wringers.[53] No contest was made and fines aggregating $6,000 were imposed.

Oil Containers.—In 1915, a petition was filed against the S. F. Bowser Company, and others, charging a combination to restrain and monopolize trade and commerce in pumps, tanks and outfits for the storage and handling of gasoline and other inflammable liquids. A consent decree granting the relief sought has been entered.[54]

Shipping.—In 1912, several indictments were returned in Alaska against a combination in the transportation business, including wharves, railroads and steamships.[55] One indictment charged a combination of the wharves at Skagway and monopolization of the wharfinger business. Disagreement of the jury in 1913 was followed by pleas of guilty by the corporations and fines aggregating $19,500 were imposed. Another indictment charged a monopolization of the steamship transportation between Puget Sound and British Columbia ports in the south and Skagway in the north. Pleas of guilty by the corporations in 1914 resulted in fines of $8,500. In 1912, petitions were filed by the Government against two other shipping combinations—the American-Asiatic Steamship Company et al., and the Prince Line et al.[56] Both cases were decided adversely to the Government in 1915 and appeals have been made.

Plumbers' Supplies.—An indictment was returned in the District Court of Alabama in 1908, charging a combination

[53] The Federal Antitrust Laws, 1916, p. 85.
[54] Ibid., p. 88.
[55] Ibid., pp. 72-3; 228 U. S. 87.
[56] Ibid., pp. 74-5.

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to restrain trade and commerce in the manufacture and sale of plumbers' supplies.[57] Pleas of guilty were entered in 1910 and fines aggregating $265 were imposed. In 1911, a petition was filed against the Pacific Coast Plumbing Supply Association, charging restraint of trade in plumbing supplies.[58] This association of jobbers and dealers extensively used a "Blue Book" to inform its members as to which of the manufacturers confined their sales to association members. A decree was entered in 1912 enjoining the acts complained of, including the use of black lists or lists of a similar character, boycotting manufacturers, forming agreements to restrict the "free and unrestrained" flow of commerce.[59]

In 1914 an indictment was returned in the federal courts of Iowa against thirty-five members of the National Association of Master Plumbers, charging a combination to restrain trade for the purpose of preventing manufacturers and dealers in plumbing supplies from selling directly to consumers.[60] The members of the association, which was national in scope, agreed to patronize and to purchase from only those manufacturers and dealers who limited their sales to members of the association, and they sought the aid of white and black lists to carry out their policy. Following a verdict of guilty for all the defendants in 1915, four of the defendants were fined $3,000 by the Court, and a writ of error granted to them. Proceedings against the remaining defendants ceased pending an appeal on the writ of error. In the following year a decision was given sustaining the judgment of the lower court.[61] Similar proceedings were instituted in 1914 against other members of the association in the federal courts of Utah, but prosecution was delayed pending a decision in the above case.

[57] The Federal Antitrust Laws, 1916, p. 59.
[58] Ibid., p. 71.
[59] Trust Laws and Unfair Competition, 1916, pp. 489 ff. 729.
[60] 237 Fed. Rep. 8.
[61] Ibid.

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CHAPTER X

THE EFFECT OF ANTITRUST PROCEEDINGS

MORE than a quarter of a century has passed since the enactment of the Sherman law in 1890. During the first twenty-five years, or until March 1915, eighty-four indictments were returned under the criminal section of this law. In six of these a verdict of guilty was returned; in five the verdict was not guilty; in ten demurrers were sustained or indictments quashed; in twenty-eight pleas either of guilty or of no contest were entered, and sentences of fine or imprisonment were imposed, but in only one case was a prison sentence served, and in this the defendants had plead guilty. Several other cases in which prison sentences were imposed were pending on appeal. The Government dismissed seventeen cases, and eighteen remained to be disposed of. There were also a number of prosecutions for criminal contempt for violating injunctions of the court, and in several cases sentences of fine or imprisonment were imposed.

During the same period eighty-seven civil suits in equity were filed under the law. While many of these were petitions for injunctions, the most important were petitions for dissolution. In twenty-nine cases judgments were entered in favor of the Government; in thirteen adverse decisions were rendered, or the cases were dismissed by the Government; in fifteen consent decrees were entered; and thirty were still pending. Only one suit was brought to condemn property seized under the act while in transportation, and this one was dismissed by the Government.

Many private actions were also brought under the law. There were fifty-three suits to recover treble damages under the terms of the act but in only a small proportion were damages recovered. The recovery in the Danbury Hatters'

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case is the best known. This section of the act has proved to be very inadequate. There were also seventy-four suits between private parties involving contracts with combinations alleged to be illegal, license agreements under the patent laws, claims for damages growing out of covenants not to compete with the purchaser of a business, and contracts to enforce fixed resale prices, which required an interpretation or application of the act. In fifty-one cases the law was urged in defence but in only sixteen was it successfully pleaded; in ten injunctive relief or damages were claimed under the act, but in only three did the plaintiff receive a judgment; four decisions did not involve the act; and in nine cases private parties sought in equity proceedings, injunctions to prevent alleged injury to themselves, but in each case the court held that such action could be brought only by the Government.

Many other proceedings instituted under the act, or finally disposed of since March 1915, are given in earlier chapters, but are not included in this summary because data concerning some of the cases is not available.

The positive results obtained from prosecutions have been quite unsatisfactory, but improvement is gradually being realized. A number of powerful combinations, it is true, have been dissolved, but as far as it is possible to judge, the consuming public has not yet greatly profited by their dissolution. Many old combinations have been allowed to continue and many more new ones have been formed. Grossly unfair restraints of trade continue to be practiced. Yet positive progress has been made through the more rigorous trust prosecution of the past decade and this increased activity, together with the legislative provisions of 1914, give the promise of more effective control over the conduct of large combinations. While much uncertainty as to what is and what is not permissible under the trust laws has been removed, much still remains. In 1911 it was even doubtful whether the Standard Oil and American Tobacco companies would finally be condemned, although the monopolistic character of these great trusts was fully known. The decisions of these cases in that year, and of others handed down since,

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have helped to show that no absolute or arbitrary standards would be followed, but no rule has been developed by the courts to determine what constitutes sufficient violation of the trust laws to require dissolution, whether the mere attainment of dominant size or power in an industry, and if so what is the limitation; or whether the abuse of such size or power is also essential, and if so, when this is reached. As a result the final disposition of such cases as the Steel, Harvester, and American Can, cannot be anticipated, although the facts in these cases are pretty well known.

Until about 1900, ten years after the passage of the Sherman law, the trust problem was usually regarded as a state problem. Since then it has become distinctly recognized as a national problem requiring federal jurisdiction. It is significant that the first important application of the anti-trust act fell upon the labor unions, perhaps the least of all organizations designed to come under the operation of this law which was primarily enacted against capitalists. The next important application affected the railroads, another class of organizations, which it is doubtful if the framers intended should come within the scope of the law. Not until near the end of the first decade was an important industrial trust condemned under the act and very few of these organizations were dissolved during the second decade. Most of the important dissolutions occurred since 1910.

No classification of trusts has ever been made by the courts or Congress save the legal one, which distinguishes between corporations engaged in intra-state and interstate commerce. During the first decade the meaning of intrastate commerce was extended as far as possible, as in the Knight case, but since then the tendency has been to regard all commerce as being interstate within the meaning of the act. No classes of combinations were exempted by the courts from the operation of the Sherman law, except to some extent those of patents and of associations not organized for profit. Pools, railroad combines, labor unions, trade associations, mergers, holding companies, and also individuals were regarded as subject to its control.

The Supreme Court, following the spirit of Congress and

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of the common law, has always regarded competition as beneficial and as a sufficient regulator of prices. Anti-social motives—the acquisition of power, the suppression of competition, and the raising of prices, have been set forth as the reason for forming combinations. The evils resulting from such combinations have been taken for granted and all the efforts put forth by the Government have been to suppress them, and to maintain competitive conditions in the industrial field. In the application of the law no attempt has been made by the courts to enumerate the specific acts or practices which constitute its violation. It broadly included all monopolies and attempts at monopoly by control and restraints of trade. At first, the Supreme Court was inclined, as in the Knight case, to consider the presence of monopoly and restraint of trade as being shown by specific acts, but later the effect of the combination as a whole was considered. Acts or contracts that considered singly were lawful, when viewed together as parts of a plan were repeatedly held to be illegal. It was usually the scope of the combination and its power to suppress competition or to create monopoly that determined its legality under the law.

A limitation of the size of corporations appealed to some people as the best way of preventing monopolies. This result might be sought either by limiting the actual, physical amount of capital under one management in any industry, or by limiting the percentage of either the capital or the gross business of an industry which any one corporation could control. Congress, while agreed upon the prevention of monopoly, has never fixed a size limit or standard, leaving this to the courts to determine. In the Knight case, the Supreme Court held that the law did not limit or restrict the rights of corporations, created by the states, in the acquisition, control, or disposition of property.[1] "Bigness," however seems to have been a factor in the Addyston and Northern Securities Company decisions. Mr. Taft, when reviewing the Sherman law, in 1910, held that the evil aimed at was not mere bigness of enterprise but the use of size to restrain trade, or create a monopoly. In the Standard Oil

[1] 156 U. S. 16.

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decision (1911), on the other hand, the size of the combination was emphasized, the Supreme Court maintaining that the unification of so vast a power and control in the New Jersey Corporation established a prima facie presumption of a combination in restraint of trade. In the Tobacco case, size was expressly excluded from consideration in arriving at the decision, but the manner in which the business of the trust was reorganized implied a condemnation of its size. In the Tobacco dissolution, for the first time, we find an attempt to approximate a standard of size. All previous dissolutions were merely legal separations of the combining corporations, regardless of the resulting distribution of the business. In the Tobacco dissolution, the business of the trust was roughly divided so that no one corporation should have more than about one-third of the total business of any one branch of the trade. The same principle was followed in the dissolution of the Powder trust. There was reduction in the size of the business unit but not in the extent of control, since the trust interests still owned a large part of the stocks and securities of the new companies organized to take over portions of the business controlled by the trust.

However, progress has been made in rendering dissolution more effective. The Northern Securities dissolution was merely formal, being condemned on that account by the dissenting opinion of the Supreme Court.[2] The Standard Oil dissolution was the most farcical of all. Corporate control was exchanged for that of the dominant stockholders. None of the bulwarks upon which its control depended were removed. In the suits, brought under the commodity clause legislation of 1906, against the railroad and coal companies in order to separate these interests, the same kind of farcical dissolution proceedings was in evidence. Only a legal separation was required. Even though the railroad completely owned all the stock of a coal company the former was held to be interested neither directly nor indirectly in the latter company. There was more effort to make the Tobacco trust dissolution effective. The business of this combination was reorganized and more restrictions were placed

[2] 193 U. S. 373.

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upon the defendants. But the common interest of these defendants in practically all the trust business remained with quite easy means of effecting and maintaining a community of interest. Large inter-corporate stock holding was permitted by the Court. This latter feature has been forbidden for organizations of the future by the Clayton Act. In the Powder dissolution the control of the defendants was lessened still more. The business of the trust was reorganized and shared with two new corporations, as was done in the Tobacco dissolution, but the control of the defendants in the new corporations was further reduced in this instance by the fact that they were compelled to receive in payment one-half of the price in bonds and half of the remainder in non-voting stock, thereby reducing the inter-corporate stock-holding control to one-fourth of the capital of the new corporations and decreasing the possibilities of a community of interest. A more distinct advance was made in the dissolution of the Union Pacific merger. The defendant company which held 46 percent of the stock in the properties illegally joined was required to dispose of all the stock. Practically one-third of it was disposed of by sale to a wholly disinterested company, while the remainder was distributed among its own stockholders in proportion to their individual holdings but only upon affidavit of no intent to unite its control with the severed properties. In the dissolution of the New Haven monopoly in 1914 the ownership of the parts required to be disposed of was distributed among different sets of men.

In recent years there has been more insistence on the part of the Government for a real dissolution in which the ownership of the parts of a dissolved combination should be divided among different groups of men. A number of these cases are pending. It is interesting to note that in two recent dissolution decrees—the Harvester and the Eastman Kodak—the lower courts ordered a division of the business among corporations having distinctly separate ownership. Such a dissolution accompanied with restraining injunction would stand in great contrast to dissolutions like those in the Northern Securities, Oil, and Tobacco cases. However, neither of the above decrees have been passed upon by the

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Supreme Court. The latter court rejected this principle in some of the earlier dissolutions, and did so again more recently in its decisions in the suits to dissociate the anthracite railroads and coal companies in which it held that a railroad was not interested directly or indirectly in the mining of coal merely because it owned all the stock of the coal company which conducted the mining operations. Effective dissolution will be delayed until this principle or the one suggested by President Wilson is adopted.[3]

While there has been a growing tendency to reduce the inter-corporate ownership of stock and control, and although the former has been forbidden in the future by the recent trust legislation, the crux of the whole problem remains in the community of interest formed among the dominant stockholders. This is a form of trust combination made possible by accumulated fortunes and the concentration of wealth. Even the prohibition of interlocking directorates will not overcome the evil. The director is but the voice of those who elect him. The recent legislation forbidding interlocking directorates will doubtless merely increase the number of dummy directors.

Neither Congress nor the courts have attempted to overcome this latest form of the trust. President Wilson offered for the consideration of Congress the requirement that owners of stock, when their voting power in several companies, which ought to be independent of one another, would constitute actual control, be made to choose in which company they would limit their voting rights.[4] Such a requirement, if time were given for a readjustment of the few present stock holdings, would not need to work hardship. It would certainly eliminate a host of abuses and be a long step forward, if the maintenance of competitive conditions in industry be the goal. It is needless to say that Congress did not follow the President's suggestion or show any serious intention of restricting an individual in the exercise of his power as a stockholder in any number of concerns. The courts seem to consider it an inalienable right of the individual to hold whatever stock he pleases. In 1914, a Circuit Court de-

[3] See p. 25.

[4] Ibid.

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cleared that no Act of Congress or judicial decision has declared it to be illegal for an individual citizen to invest his money in two enterprises merely because the enterprises may be closely connected. This was the decision given in a suit to separate the anthracite railroads from the coal companies. While the Supreme Court reversed this decision, such action was on the ground of a unity of management existing between the companies, and the ownership of the stock by the same stockholders was specifically sanctioned.[5] As long as this principle is sustained, effective dissolution will not only be delayed, but trust formation on the basis of common stockholding will be further stimulated. Some day our law makers may be forced to take a bolder step; they will not permit any supposed right of private property to serve as a bulwark for monopoly.

No satisfactory solution has been found for the problems arising in connection with those monopolies due to the ownership of natural resources, a situation well illustrated in the aluminum and anthracite coal industries. The attempt to free the latter industry from monopoly combination with the railroads has so far been a dismal failure. Even if the attempt had succeeded a community of interest would be almost inevitable because of the extreme localization of the hard coal fields and because of the already concentrated control in the hands of a few. The problem of public ownership may be considered in determining upon a policy for this and similar situations where scarcity, localization, or other circumstances constantly invite the creation of monopolistic control over natural resources.

Little was accomplished prior to 1914 toward securing systematic and adequate publicity on the part of large corporations. Occasional, yet important, investigations were made by the Bureau of Corporations, which was created largely for this purpose. The Commissioner of this Bureau, in his annual report for 1912, reviewed the ten years' accomplishment of the Bureau and reported that publicity had been hampered and restricted by the limitations of the Charter Act, and that therefore the results attained were not

[5] See p. 175.

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a fair measure of what might be expected under broader powers. In the dissolution decrees for the trusts dissolved no provisions for publicity subsequent to the proceedings were included, and no adequate way was provided by which it could be ascertained whether the decrees were effectively carried out. One of the important features of the 1914 legislation was its provision for publicity and investigation. The need for this has been imperative, and when it is properly provided this publicity will go far toward securing efficiency of corporations, safety to investors, needful data for legislation, and a basis for dissolution decrees and the reorganization of dissolved corporations.

Our patent laws are still aids to trust formation and obstacles to trust dissolutions. Notwithstanding the fact that as a nation we have been excelled by none in the number of inventions, nearly every other leading nation excels us in the effort to control and to secure for the public the benefits of patented inventions. A number of trusts have been described which relied solely upon the monopoly control of patents. Many of the trusts considered have taken advantage of our patent system as, for example, in the field of telephony, picture films, cigars, electric lamps, cash registers, shoe machinery, and petroleum refining. The holder of a patent obtains over the invention a complete control which was extended in the Dick case, decided in 1912, to the materials used in connection with it, and he may if he chooses suppress the invention instead of marketing it. The trusts have usually forestalled competition by obtaining control of the patents in the industry concerned through the hiring of the inventors, through the outright purchase of the patents, or through prolonged court litigation.

No provisions were included in the trust legislation of 1914 to overcome patent abuses and evils, except to prohibit the use of exclusive and tieing leases which required the use or purchase of other articles, patented or unpatented, as a condition of securing certain desired goods. Congress might have provided that a patent be forfeited when it was combined with another patent or was made a part of a combination. To have a patent become void if not used is surely a

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just requirement. Patent monopoly could perhaps be further restricted by granting a royalty right to inventors, so that any one could manufacture the patented article under a license from the Government by paying a fixed royalty. The prohibition against the use of tieing clauses in connection with patents is necessary to prevent the extension of patent control to cover the use or sale of unpatented things. The position taken by the Supreme Court in the Dick case was apparently reversed in April 1917, by denying the right of the maker of a patented motion picture machine to compel purchasers to use only certain unpatented films and by denying the right of the maker of a patented phonograph to fix the price at which the machine would reach the ultimate consumer.

The need of a change in the means and methods of carrying out the antitrust policy has long been felt. The system of occasional prosecutions, dependent upon Attorney Generals, who in turn are appointed by the Presidents whose attitudes toward the trusts and the enforcement of the trust laws are various and changeable, should be replaced by a system which will bring continuous administrative action. In many of the trust suits, after gross violations of the laws were uncovered, years of judicial deliberation and delay passed before a final decree was approved. As a result of administrative delay great financial loss to consumers and a stronger entrenchment of the trust's position in the industry have frequently occurred. Many of the important trusts condemned in the lower courts could well afford, as nearly all did, to appeal and thereby prolong the litigation, which in many cases ranged from three to five years, or more, even though there was no hope of a more favorable decree, in order to continue the profits during the delay attending appeal. Indeed, the time required for investigation and prosecution to a final decree was frequently so long as to invite the formation of combinations by promoters who had no hope of escaping a dissolution decree, but who determined to make what they could before such dissolution could be accomplished. It was a case of all to gain and nothing to lose, for it is difficult to point to an important dissolution that

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left the combining interests in a less favorable position than that they occupied before combining. Since there is no attempt at reparation, gross violation of the law bringing injury to other producers and the public should be speedily suppressed. Here, as elsewhere, promptness would beget a more wholesome fear. The earlier the decision the less drastic would need to be the action to secure the same effect. One object in establishing the Trade Commission was to meet this need.

This study has shown the large part played by unfair methods of competition in building up and maintaining monopolistic control. Such methods have been relied upon far more than superior efficiency, and have frequently shielded inefficiency. The following unfair methods of competition have been declared by the federal courts to be illegal under the Sherman law: price cutting, the use of "fighting ships," bogus independents, exclusive and tieing contracts, inducing breach of competitors' contracts, enticement of employees from the service of a competitor, bribery and espionage, the requirement of the use of certain articles as a condition of the purchase or use of other articles, boycotting by trade associations through the use of black or white listing methods. Additional unfair methods which have been prohibited without comment by decrees are as follows: "fighting brands" and "flying squadrons," defamation and disparagement of competitors and their goods, preventing competitors from obtaining raw materials and machinery, retention of competitors' property, price control, prevention of sales, limitation of output, allotment of customers and division of territory, the purchase of stock for the purpose of harassing a competitor, and the use of coercion, threats and intimidation, including threats to sue for infringements. Other federal legislation partly designed against unfair methods includes the Interstate Commerce legislation, which makes rebates and discriminations illegal, the Clayton Act, which makes discrimination in price and the use of restrictive sales and leases illegal, and the Pure Food and Drugs Act, which incidently protects honest dealers from the fraudulent competition of unscrupulous rivals. There are still other unfair

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methods held illegal at common law or declared illegal by the various state laws. But by far the most comprehensive is the Federal Trade Commission Act, which makes unfair methods of competition in commerce illegal and empowers and directs the Trade Commission to prevent such methods. This law makes no attempt to enumerate the specific acts or practices constituting illegal methods, but leaves it for the Commission to decide when a practice is unlawful. Such a list would be inexhaustible and some of the known methods defy description. The prevention of such methods, which is one of the most important duties of the Commission, is one of the best ways to prevent the development of monopoly.

Although unfair methods are still practiced, it cannot be doubted that competition is more refined and is attended with fewer cut-throat and predatory practices than was the case two decades ago. From every quarter—publicity requirements, federal and state legislation and investigations, court injunctions, dissolution decrees, Commerce and Trade Commissions, development of business ethics—restraining influences have been exerted against the use of unfair methods, and in view of the large part played by unfair methods in building up and maintaining monopolistic control, this change is one of the surest signs of progress toward solving the trust problem.

Since the courts pass upon the legality of combinations at the time the suits are filed, it is significant to point out how combinations began to alter their affairs and conduct as soon as a suit was impending. This is illustrated by the general abandonment of rebates by the Standard Oil Company, the discontinuance of the Gary Dinners by the Steel Corporation, the breaking up of the tin plate contracts by the American Can Company, and by the division of assets and business by the International Harvester Company. In most cases the defendants at the time of the trial had abandoned the more important unfair methods of competition.

One of the most serious problems which appeared in connection with trust prosecutions was to find a proper method of disintegrating combinations adjudged unlawful and of reorganizing the business on a competitive basis. The

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courts were not adapted for such reconstruction and many of the dissolutions are failures, both in theory and practice. Indeed, the failure of our trust policy has been chiefly due to the manner of accomplishing dissolution rather than to any inherent difficulty in restoring competitive conditions. The dissolution of a modern trust involves economic rather than legal knowledge. In no case was a receivership actually established, the nearest approach to it being in the Union Pacific and New Haven dissolutions where trustees were appointed to hold and transfer the stocks required to be disposed of. The courts have frequently asked the defendants to present their plan of dissolution. It is true that they have not always accepted the first plan presented and have even wholly rejected some plans presented by the defendants, as in the Great Lakes Towing, Eastman Kodak, and Corn Products Refining cases, but in many others, including some of the most important cases, little or no attention was given to other plans or to the objections which were raised against the plan submitted, as in the Tobacco dissolution. The dissolutions, particularly of the Securities, Oil, and Tobacco companies, have convinced the nation of the need of a federal administrative body with adequate powers of investigation, publicity, and administration, whose members are in close touch with business affairs and acquainted with the commercial situation. The Federal Trade Commission was designed to meet this need, but it was left to the option of the courts to call upon the Commission for its services and they have not so far shown much inclination to make use of this body. Apparently in only one case has the court called upon the Commission and in at least one case they have refused a request of the defendants to leave the plan of dissolution to the Commission.

The increasing number of consent decrees in equity, and of pleas of guilty or no contest to indictments may have several interpretations. From the summary above, it will be seen that of the suits in equity the Government won judgments in twenty-nine, and in fifteen it secured consent decrees. A number of the latter have since been entered. This increase may mean that violators of the law fear the results of

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prosecution more than formerly and decide to avoid costs and public exposure; or it may indicate that they are able to secure more favorable decrees by not compelling the Government to carry on a long trial which always is uncertain as to the outcome; or it may mean that the defendants do not have enough at stake to make it worth while to contest. There is reason to believe that the first motive has exerted an influence because important consent decrees became more numerous as trust prosecution became more vigorous and effective. If this conclusion is correct it is evident that the aim of the trust policy is being realized. However, judging from the nature of many of the consent decrees, the second motive must have moved some of the defendants, including some of the most flagrant violators of the trust laws, who secured as favorable decrees as could possibly be hoped for. They usually suffered no division of their business nor sacrificed any of the advantages illegally obtained, but merely promised to be good thereafter under restraining orders enjoining the use of certain unfair methods formerly practiced. The Cash Register decree in 1916 is a good example. No doubt the third motive was dominant in some cases; there was not enough at stake to pay for a contest.

Restraining provisions have usually constituted a large part of dissolution decrees and have frequently been the only relief given. While there has been a tendency to increase the scope of the injunctions, the insufficient scope given to them has been frequently pointed out in preceding pages. Since in many cases the injunction is the only relief given it is important that it be made sufficiently inclusive to prevent the recurrence of the unfair practices. Many of the dissolution decrees could have been made much more effective by including certain restraining provisions, and the failure to do so is serious in view of the length of time and costly investigations and prosecution required to reconvict. Moreover, it is improbable that the trusts will ever allow to exist for use in future prosecutions such condemning evidence as was obtained in the first trials. These considerations all point to the limitations of the injunction as the sole measure of relief, as was done in the "bath tub," cash register, and nearly all

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the consent decrees. A corporation which has created and maintained a monopoly through unfair practices will, if left in control, find means through indirect and secret methods to evade any injunctive restrictions that may be imposed, without apparent violation of them or the law, and the force of its size and of established trade connections, unfairly attained, will keep competitors at a great disadvantage. It is difficult to prove most violations of the injunctions and in the few cases where parties have been found guilty they have been rather lightly dealt with. There is also an increasing tendency on the part of the courts to retain jurisdiction of the cases passed upon, as is illustrated in the Harvester, American Can, Eastman Kodak, and other cases. As contrasted with this attitude, the Court, at the time of the Tobacco dissolution, refused the petition of the Government to retain further jurisdiction of the case. The recent action of the Trade Commission in agreeing to fix the price of print paper also marks an advanced and significant step in the direction of exercising greater control over industrial corporations.

Frequent references have been made in previous pages to the Federal Trade Commission; the need of such a body, its creation, powers and duties, and the various reports prepared by it. The failure to give it more power independent of the courts makes hazardous any prediction of its future, but it is not probable that the subordination will deprive the Commission of its larger usefulness. The interest shown in the trust legislation and in the appointment of the members of the Commission and its work is manifesting itself in the public knowledge which may secure for it powers large enough to maintain competitive conditions.

In addition to completing a number of extensive investigations previously begun by the Bureau of Corporations, the Commission has prepared numerous reports dealing with such subjects as lumber, silk, gasoline, pipe lines, print-paper, bituminous and anthracite coal, fertilizer, and it has also made a study of foreign trade conditions. The spirit and scientific method shown in its investigations promise valuable permanent results. The most important duty of

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the Commission is to prevent unfair competition. The constant investigations and publications, and the occasional prosecutions by the Commission are of inestimable value in suppressing unfair methods. Its policy of publicity in this connection accomplishes three purposes. The decisions of the Commission furnish information and guidance to the public; they protect legitimate business against unfounded complaints; and bring the disapproval of public opinion against those who refuse to abandon unfair methods. Applications for relief where complaints are made without cause receive no publicity; where the unfair methods are voluntarily stopped the facts and rulings of the Commission, but no names, are published; and in all cases reaching the stage of formal proceedings full publicity is given. Thus there is publication of the rulings in each case as it is disposed of, which is intended to furnish criteria for the determination of legal and illegal practices in trade. These decisions are known as conference rulings. During the first year several hundred complaints were filed. Many of these were without foundation and many others concerned things beyond the jurisdiction of the Commission. In many cases the unfair methods were voluntarily discontinued. In very few cases has it been necessary for the Commission to institute formal proceedings. The constant restraining influence exerted by this Commission, endowed as it is with administrative and quasi-judicial powers, though perhaps not entirely adequate at present, nevertheless greatly assists in maintaining competitive conditions in the industrial field.

The ineffectiveness of many of the dissolutions noted does not necessarily condemn the antitrust policy nor prove the impossibility of restoring competitive conditions among the parts into which a combination has been divided. For many years the trust law was virtually nullified by the interpretation placed upon it and by the defective manner of its enforcement. More recently the failure to obtain better positive results has been due to the manner of accomplishing dissolution rather than to any inherent difficulty in restoring competitive conditions. Our best efforts and methods have not always been used. Flagrant violations of the

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law have not been handled with enough promptness and severity; the chief offenders have not been punished nor deprived of advantages and gains illegally obtained; and in few cases has the control been divided among separate groups of men.

But the efficacy of the law cannot be measured by the tangible results obtained. The good resulting from the antitrust policy has been largely preventive. Trusts existing in violation of the law, even though not actually prosecuted, hesitated to expand as they would otherwise have done. The decline of efforts to create dominating concerns in the various industries is an indication of what has been accomplished. These results which can not be measured have been largely overshadowed by the conspicuous ineffectiveness of several important dissolutions and the long delay or failure to condemn certain other notorious trusts. To prove monopolistic intent or attainment under complicated modern industrial conditions is very difficult, but it is easier than to distinguish constantly between "good" and "bad" trusts, especially since the latter begin to make a temporary reform in their conduct when the first steps in the long process of proving them bad are about to be undertaken. In recent years there is growing evidence of better results, both negative and positive, and perhaps a continued rigorous prosecution of unfair restraints of trade and of monopolistic combinations, accompanied by a few real dissolutions, would prevent the more obvious unfair uses of monopolistic control.

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